

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 4, 1985

The meeting of the Human Services and Aging Committee was called to order by Chairperson Nancy Keenan on February 4, 1985 at 3:00 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 183: Hearing commenced on House Bill No. 183. Representative Robert Ellerd, District #66, sponsor of the bill, stated that an act to require that a non-smoking area be designated in each enclosed public place; to remove the option of designating the entire area of a public place as a smoking area; and to increase the penalty for non-compliance was needed. Representative Ellerd supplied testimony, Exhibit 1, which consisted of a list of the people who have signed a petition in getting a matter into law for non-smoking area. Basically, what this will accomplish is to provide a non-smoking area in every public place.

Proponents included 33 students from the Jefferson Grade School in Helena. Six of these students verbally testified and their testimony is attached hereto as Exhibits 2. Barry Yjort, representing the Montana Society of Respiratory Therapy supplied testimony from Leonard Bates of the MSRT and also from Richard Blevins, M.D., a thoracic physician who commented on the adverse consequences of cigarette smoke both in the smoker and in the unfortunate victims of passive smoking. This testimony is supplied as Exhibit 3. Representative John Vincent stated that although the Constitution of Montana does not mandate the approval of this type of legislation, it provides us with a great deal of strong direction on the subject. Jim Peterson, Chief of the Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences stated the Department would function in a directional capacity to assist the local health agencies in enforcing the provisions of the act. Don Corti, speaking on behalf of the Missoula City/County Health Department stated that the benefits to public health which can be attained by the enactment of this bill are well documented. Corti's statements are attached as Exhibit 4. Clare Cantrell representing the Lewis and Clark City/County Health Department spoke of side stream smoke as opposed to main stream smoke. Healthy changes in the lives of State employees is the main objective of Ms. Cantrell's job. Earl Thomas from the American Lung Association stated that less than 30% of all adult Montanans smoke. The other 70% would like some say in the quality of the air they breath to live. Only one-half of the nations' smokers

agree they should not smoke in the presence of non-smokers. Mr. Thomas' testimony is attached as Exhibit 5. Don Allen, on behalf of the Montana Hospital Association stated that health care facilities are trying to designate specific areas for smokers and non-smokers. Scott Peterson, manager of Mr. Steak, stated that his restaurant does have a designated smoking and non-smoking area. John Alke representing the Montana Physicians Service/Blue Shield said that MPS is the largest health provider in the state and as one of the largest employers, will need to conform to the provisions of this action. Doug Olson is an attorney and legal services developer for the states' senior citizens. Since the administration has not taken a position on this bill, Mr. Olson is appearing on his own time and his testimony is attached as Exhibit 6. Eileen Robbins supports this bill. Ms. Robbins has bronchial asthma. She states that owners of establishments have been unwilling to designate non-smoking areas in the past even when specifically asked by Ms. Robbins. Exhibit 7 is her testimony. Ann Krebill, testifying in Exhibit 8, claims that there is a need to maintain a constitutional right to maintain a safe, sanitary environment and the Supreme Court has deferred to the decision of the legislature concerning the right to regulate private enterprise, specifically regarding non-smoking regulations. With an issue as important as smoking, it is ludicrous to say that this issue is not important enough to qualify for ensuring that all citizens are assured of their right to free choice and clean air. Bob Moon, health education consultant, Montana Department of Health and Environmental Sciences, stated that concerns over the health effects from passive cigarette smoke are hardly a myth, as some tobacco advertisements suggest. In reality, passive cigarette smoke is likely the most dangerous pollutant we face today. Exhibit 9 indicates his testimony. Kathleen Smith, a 1980-82 Montana state employee in the human services field worked in an accounting office. Because of Ms. Smith's efforts to establish non-smoking areas in offices she was perceived as an agitator and was forced to resign from her job. Because of no legislation to fall back on, there was no form of support from the Department of Health to aid Ms. Smith in regaining her job. Consequently, she supports this bill. Mary Gettle a Great Falls school teacher left a position in an office she had previously been employed in because of the hazard of cigarette smoke and her pregnancy. Her testimony is attached as Exhibit 10. John Slolan, previously employed by the Department of Health indicated his support. David Lackman, lobbyist for the Montana Public Health Association supplied a witness statement of his support and also supplied an article on the hazards of

smoke. This is attached as Exhibit 11. Written testimony is supplied by Ann Danzer and is attached as Exhibit 12.

Opponents to House Bill No. 183 included Representative Paul Pistoria who indicated that everyone had a right to smoke if they so desired. The buildings that offices occupy now have been built on cigarette taxes. Thomas W. Maddox, representing the Montana Association of Tobacco and Candy Distributors indicated his opposition and his testimony is attached as Exhibit 13. Buck Bowles, President of the Montana Chamber of Commerce, feels that this legislation is not needed. This bill would infringe on the management decision making process within an establishment. Mr. Bowles feels that we don't need state government making those kinds of decisions for business. Jerome Anderson, attorney representing the Tobacco Institute indicated that for every study that the Lung Association and the Cancer Association oppose in the use of tobacco products bring to this Committee, Anderson states that another study done by a reputable and respected health organization could be found to indicate that passive smoke is not of danger to people. Rollin D. Pratt, executive director of the Montana Restaurant Association feels that the market place will determine what is going to be done in an establishment. Phil Strobe, representing the Montana Tavern Association and the Montana Innkeepers Association states that all public places would require adherence to the law including state offices and federal offices and places of business.

There being no further proponents or opponents present, Representative Ellerd closed the discussion.

A question from Representative Cohen to Representative Ellerd consisted of whether or not the House chambers would also require a non-smoking area and the answer was yes.

There being no further questions, Chairperson Keenan closed the hearing.

HOUSE BILL NO. 455: Hearing commenced on House Bill No. 455. Representative Ben Cohen, District #3, sponsor of the bill stated that an act to require that payments for general relief medical services be considered payment in full. Cohen discussed the fiscal note which was attached with this bill. This bill would require all medical providers who accept payment from the Department of SRS to accept this payment as payment in full. Cohen said that the only time the state or county makes payments is if this person is an indigent. Many hospitals in the state

were built with the financing under the Hill-Burton Act. This act provides for these hospitals to provide services to indigents and then they are forgiven part of their obligations.

Proponent Lee J. Tickell, deputy administrator, Economic Assistance Division, Department of Social and Rehabilitation Services stated that the state medical program requires that a client utilize available income and spend down or whatever resources they have available for the payment of medical bills prior to the time the state medical program picks them up. At that point in time these recipients are without resources and with minimum income and because of their medical conditions, to be put in the position of paying for anything more than what we pay on their behalf. Mr. Tickell provided his testimony and is attached as Exhibit 14.

Opponents included John Hyslip, Kalispell Regional Hospital. He supplied testimony which is attached as Exhibit 15. Hyslip stated that no real savings is made; costs are simply shifted to other payers. This bill represents "first dollar coverage" for some classes of recipients. No incentive will be made to not utilize health services. Chad Smith, appearing on behalf of the Montana Hospital Association, stated that whenever a provider of hospital or medical services accepts payment for services from the state or county, the payment must be considered as payment in full for such services. Randy Beck, Northern Montana Hospital stated his opposition to this bill. Jerry Loendorf, representing the Montana Medical Association, states that only the county and not the indigent person is responsible. The county is the person who hires the health care provider and the county is the person who pays for it.

There being no further proponents or opponents, Representative Cohen closed by saying that the state is only assuming responsibility for twelve counties. But, those twelve counties represent 60% of the states' population. It is not the citizens of that county that will be asked to pay, but the state.

There being no further proponents and opponents present, Chairperson Keenan asked for questions from the Committee.

Representative Wallin questioned Mr. Tickle by asking who the charges would be charged off to and Tickle replied that it would be any medical provider. Representative Gilbert asked Mr. Smith if any patients were ever turned down for

service and the answer was no. Representative Phillips questioned the scale used in payment and Tickle stated it was the medicaid scale. Representative Waldron as to whether some doctors limit the number of medicaid patients they will administer to and Mr. Loendorf answered yes. Representative Gilbert asked Mr. Tickle if SRS had a field of concern that they were actually obligated to and Mr. Tickle stated that there was no impact.

There being no further discussion on House Bill No. 183, the hearing was closed by Chairperson Keenan.

HOUSE JOINT RESOLUTION NO. 19: Hearing commenced on House Joint Resolution No. 19. Representative Waldron, District #58 stated that a joint resolution of the Senate and the House of Representatives of the State of Montana urging the Department of SRS to provide priority referral and placement for pregnant teenagers was needed. We have a tremendous problem in Montana and nationally with teenage pregnancy stated Waldron. Teenage mothers end up in the welfare system in a number of ways. They end up impacting it on medicaid and AFDC which our taxes pay for.

Proponent Karen Northy, program director of the Florence Crittenton Home which supports this bill supplied Exhibit 16 which indicated the monthly cost comparison of services for 200 teenage pregnancies and also a cost analysis of teenage pregnancies. Carol Morris, social worker at the Florence Crittenton Home told the Committee of three cases which also had follow-up and the outcome of these cases. Joni Cearley, a senior nursing student attending Carroll College and former resident of the Florence Crittenton Home stated that the type of service available, the chances of having healthier babies and mothers with better parenting and life skills increases her chances of a better life. Ms. Cearley supplied testimony and it is attached as Exhibit 17. Dr. Don Espilin, pediatrician in Helena and on the staff of the Health Department since 1983 stated that if we have 2,000 teenagers delivering children in the state every year, that is one-seventh of the babies we deliver in the entire state. The 1983 premature rate was 5.6% per 100. Mothers in their teen years will deliver the greater percentage of these premature babies than mothers in their twenties. The cost of caring for the average premature child was \$1,000 per day for an average of 25 days. Clare Kantrell employed at a family planning agency for three and one half years stated that a reliable system which offered consistent assistance and support to a very vulnerable person going through a very difficult time.

Ann Brodsky, Women's Lobbyist Fund supplied written testimony and is attached as Exhibit 18. She states that this bill addresses the common ground we have and provides the important recognition that must be given to the difficulties faced by young, single, pregnant women and young, single mothers. Jim Flanagan, director of the Catholic Social Services, said that the agency which he represents is an adoption agency. John Ortwein representing the Montana Catholic Conference indicates his support. Gary Walsh, Community Services Division of the Department of SRS stated that when the proper services were not provided to an individual, SRS then provides services to the mothers at a later date in terms of providing either economic assistance programs like AFDC or medicaid and the Department of SRS also serves them in terms regarding abuse and neglect.

There being no further proponents or opponents, the hearing was closed by Representative Waldron.

Questions from the Committee began with Representative Phillips. Phillips questioned Mr. Walsh and asked why it was necessary to come before the legislative body to tell SRS to put more emphasis on this and Mr. Walsh replied that SRS is faced with pressures from many directions and this is an opportunity to move in a more preventive kind of stance. Mr. Phillips then questioned if SRS would be asking for more appropriation and Walsh said the funding would remain the same.

There being no further questions, Chairperson Keenan closed the hearing.

EXECUTIVE ACTION:

ACTION ON HOUSE BILL NO. 165: Chairperson Keenan stated that a Statement of Intent had not been accompanied with House Bill No. 165. Representative Gould made a motion that the Statement of Intent do pass. The motion was seconded and House Bill No. 165 Statement of Intent was voted DO PASS WITH STATEMENT OF INTENT.

ACTION ON HOUSE BILL NO. 455: Several questions were raised by Committee on this bill. Because of the complexity of this bill Representative Gilbert then stated that action on this bill should be delayed. Chairperson Keenan then stated that further consideration would be taken at a later date.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 7:12 p.m.


NANCY KEENAN, Chair

STANDING COMMITTEE REPORT

February 4, 19 85

MR. Speaker

We, your committee on Human Services and Aging

having had under consideration House Joint Resolution Bill No. 19

first reading copy (white)
color

Urging priority referral and placement for pregnant teenagers

Respectfully report as follows: That House Joint Resolution Bill No. 19

DO PASS

64
Hansen

T. T. BEDNAREK, M. D.
P. C., Inc.
1230 NORTH 30TH
BILLINGS, MONTANA 59101
TELEPHONE 252-2043

January 17, 1985

Representative Robert A. Ellerd
State Capitol
Helena, Mt. 59620

Dear Mr. Ellerd:

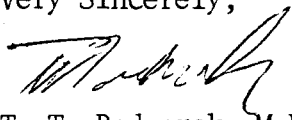
Enclosed is only a partial list of the people who have signed to help you in getting a matter into law for no-smoking areas in public places. I could have acquired at least three times more signatures if the press of time were not so evident. You will appreciate that these were obtained in less than one day. There are many anesthesiologists and also the administrator of St. Vincent's Hospital who I did not approach as well as the Billings Deaconess Hospital as of this time. Signed

I am certain that you are quite well aware of the need for no-smoking areas. It is of interest to me that the United States Public Health states that approximately 32% of the people of the United States still remain smokers. Only 10% of all the physicians continue to smoke. Of the 10% who smoke only 7% are cardiologists and pathologists. So it is quite evident that the vast majority of the people in the United States are no longer smokers and they should be provided with no-smoking areas or conversely those who do continue to smoke should be provided with areas for smoking.

It is our preference that public places be declared as no-smoking areas but a place be allotted for those who do smoke.

I will continue to help in any way I can.

Very Sincerely,



T. T. Bednarek, M.D.

PRACTICE LIMITED TO
OBSTETRICS AND GYNECOLOGY
F.A.C.O.G.

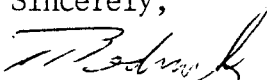
T. T. BEDNAREK, M.D.
P. C., Inc.
1230 NORTH 30TH
BILLINGS, MONTANA 59101
TELEPHONE 252-2043

January 14, 1985

This is in reference to the passage of a law allowing for
non-smoking areas in public places including restaurants.

If you are in agreement with such a law please sign.

Sincerely,



T. T. Bednarek, M.D.

Robert A. Wilson, M.D.
David H. Holow, M.D.
John K. Kline
Charles K. Kline
R.W. Pedersen M.D.
Robert M. M.D.
David Myers M.D.
Don O. M.D.
James L. M.D.
Michael E. M.D.
Russell S. M.D.
Michael E. M.D.
Bill Murray
James E. M.D.
David A. M.D.
D. F. M.D.
Robert M.D.
Stephen C. M.D.
John C. M.D.

T. T. BEDNAREK, M. D.
P. C., Inc.
1230 NORTH 30TH
BILLINGS, MONTANA 59101
TELEPHONE 252-2043

This is in reference to the passage of a law allowing for non-smoking areas in public places including restaurants.

Sincerely,

Leona Philkower P.C.T.
Barbara Robinson - Robinson
Jeanette Robinson

Sandy Allen

Arady Arady

K. Maier

Elizabeth B. Greene

J. Gould, RN.
 J. Trudall RN
 D. Kimmery RN
 Chloé Poirier
 amccaffery RN
 J. White RN

Szuk

Frank E. Hill MD

J. C. Allen MD
Vernie Krist, RN
Chambers RN
D. Bender RN
K. A. Leach MD.
C. Upmud RN
Shirley Fraymond CRNA
Bonnie Larsen R.N.
Deane Fischer CRNA
Melissa Ovenson RN
Elizabeth E. Riley RN
Edith Woodbury RN
Dora Lee Patten
Geraldine Gruski
Annabelle Pedras
George A. Pett
Rose Senn
Mary Ann Fischer
L. Hobbs
Guth Tombs R. N.
Sandra Garrett
K. M. M. R. N.

Gayle
Staley RN
Donna
Mary Mae RN
Barb Davenport RN

PRACTICE LIMITED TO
OBSTETRICS AND GYNECOLOGY
F.A.C.O.G.

T. T. BEDNAREK, M.D.

P. C., Inc.

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BILLINGS, MONTANA 59101

TELEPHONE 252-2043

January 14, 1985

This is in reference to the passage of a law allowing for
non-smoking areas in public places including restaurants.

If you are in agreement with such a law please sign.

Sincerely,

T. T. Bednarek, M.D.

Jon M. Osim R.N.

John Zacher

Claudette Hanson
Kathleen Myers, R.N.

Michelle Reuter R.N.

K Mark Warner SRT

Bette Jo Van Boast
Sollidad Arellano

Dale Lee Newmyers.

Grace Soto

Julian P. Buelo

Ina Rae Amison

Kathleen Orms

Riz Lokreny

Jean F McDonald RN

Patricia Foster

Cindy Wootton RN

Martha Van Natta RN

Carol Skinslow

Linda Spengler M.D.

Kathy Jolly RN

Phyllis J. Tiet LPN

Cindy K Schneider

Bartholomew Barnes RN

Allene H. Morris R.

Fred L. Carl

Pam Beljue R.N.

Mary Anderson LPN
Mary Hecker LPN

Persons who support H.B. 183 1-30-85

Kathy Quist, Helena

Pam Campbell, Helena

LuAnn Driessen, Helena

Christopher Noe, Helena

Bob Moon, Helena

Cindy Brown, Helena

Leonard Bates, Great Falls

Skeeter Benton, Great Falls

Dan Corti, Missoula

Jim Peterson, Helena

Margaret Taulbee, Missoula

Cathy Vickers, Helena

Kathleen Wynn, Helena

Joan Fitzgerald, Helena

Judy Olson, Helena

Eileen Robbins, Helena

John McBride, Butte

Polly Holmes, Helena

Frank Kromkowski, Helena

Doug Olson, Helena

Art Kussman, Helena

Ann Krebill, Helena

Sandi Heffelfinger, Helena

Richard Buswell, M.D., Helena

R.M. Shepard, M.D., Helena

Dorothy Stevens, Helena

Debra Reynolds, Superior

Kathleen Kozlowski, Gardner, MT

David Anderson, M.D., Great Falls

Ken Eden, M.D., Helena

Judy Gedrose, Helena

FREEDOM FROM SMOKING CLINIC leaders

Janet Jansen, Broadview

Brad Allen or Lowell Bartell, Helena

Gary, Mr. Steak, Helena

Barry Hjort, Helena

Larry, Village Inn Pizza

Betty Johnson, Helena

Barbara Conehil, Helena

Ted Maloney, Helena

Sidney Pratt, Helena

Verne H. Ballantyne, Bozeman

Olive M. Logan, Manhattan

Cecil Gubser, Billings

Allan Baynard, Townsend

Stan Wieczorek, Billings

Hilda Buzzas, Lewistown

Dorothy and John Stocksdale

Gary Norine, Bozeman

Jackie Alverson, Gallatin

Mrs. Darlene Springer

Ellis Lewis, Livingston

50-40-102. Purpose. The purpose of this part is to provide for reserved areas in some public places for nonsmokers and to provide for reserved areas in some public places for smokers who choose to smoke.
History: En. Sec. 2, Ch. 368, L. 1979.

50-40-103. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.
- (2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.
- (3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- (5) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.
- (6) "Smoking area" means a designated area in which smoking is permitted.
- (7) "Place of work" means an enclosed room where more than one employee works.

History: En. Sec. 3, Ch. 368, L. 1979; and, Sec. 1, Ch. 460, L. 1981.

Compiler's Comments
1981 Amendment: Added "open to the public" at the end of (2); inserted subsections (4) and (6); and substituted "Place of work" for "Working area" in (7).

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) Except for those enclosed public places provided for in 50-40-105, the proprietor or manager of an enclosed public place shall:

- (a) designate nonsmoking areas with easily readable signs; or
- (b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or
- (c) designate the entire area as a smoking area by posting a sign that is early visible to the public stating this designation.
- (2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

- (3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) the tavern area of the establishment.

History: En. Sec. 4, Ch. 368, L. 1979; and, Sec. 2, Ch. 460, L. 1981.

Compiler's Comments
1981 Amendment: Added "by posting a sign" at the end of (1)(c); and added "it is clearly visible to the public stating this designation" at the end of (1)(c); and added subsection (3).

40-1. Nonsmoking areas. The purpose of this part is to provide for reserved areas in some public places for nonsmokers and to provide for reserved areas in some public places for smokers who choose to smoke.
History: En. Sec. 5, Ch. 368, L. 1979.

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

- (a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;
- (b) prohibit smoking in all kitchens, laboratories, and corridors;
- (c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;
- (d) provide a nonsmoking area in all waiting rooms;
- (e) prohibit employees from smoking in patient rooms; and
- (f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.
- (2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.
- (3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: En. Sec. 6, Ch. 368, L. 1979.

50-40-107. Exemptions. The following shall be exempt from this part:

- (1) restrooms;
- (2) taverns or bars where meals are not served;
- (3) vehicles or rooms seating six or fewer members of the public.

History: En. Sec. 7, Ch. 368, L. 1979.

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.

History: En. Sec. 8, Ch. 368, L. 1979.

50-40-109. Penalties. A person who fails to designate or reserve a smoking or nonsmoking area in his establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than \$25.

History: En. Sec. 3, Ch. 460, L. 1981.

CHAPTER 41

LAETRILE

Part 1 — General Provisions

Section	
50-41-101.	Laetrile defined.
50-41-102.	Laetrile authorized.
50-41-103.	Hospital may not interfere.
50-41-104.	Health care facility liability.
50-41-105.	Physician not subject to disciplinary action.

Good afternoon Chairperson Keman and members of the committee,

I am Geoff Unger. I am a 6th grader at Jefferson School. I am trying to talk you into voting for House Bill 183. I think Montana is falling behind in some bills. First of all we could really catch up in one area that is the clean indoor air act Rules. For instance Minnesota already beat us to it but we could catch up. What we're doing isn't to keep people from stop smoking we just don't want them to smoke around us. Each public place should provide at least one area for non-smokers. That's why I want you to vote for House Bill 183.

Thanks for taking the time to listen.

Good afternoon Chairperson Keenan and members of the committee. My name is Erika Rasmussen and I am in the fifth grade at Jefferson school in Helena. I would like for you to vote for house bill 183 because I don't think it's fair that nonsmokers

to have to breathe in the smokers smoke. Second hand smoke is almost as harmful to nonsmokers as it is to the people who do smoke. I don't think it's that much fun to go to a restaurant or a grocery store to breathe someone else's smoke. And what some places call a nonsmoking area is just a little space and the smoke still gets over to me.

Good afternoon Chairperson

Keenan and members of the committee. My name is Molly Cox and I am a fifth grader at Jefferson School. I want you to vote for House Bill 183

because I don't think it is fair for those of us who don't smoke to have to breathe in other's smoke. Second-hand smoke is almost as harmful to your health as actually smoking a cigarette.

I don't like it when people smoke because it makes me ill. If I'm in a restaurant and someone is smoking, I can't eat because of the smell. I am fully for this bill and I hope you are to. Thank-you for your time.

Good afternoon Chairperson Keenen +
members of the committee,

My name is Kristi
Keeler. I'm a sixth grader at
Jefferson school in Helena.

I don't like cigarette
smoking because I breath in
that smoke.

Second hand smoke
leads to Heart disease, lung
cancer, Chronic Bronchitis, +
Emphysema. This bill is not
saying that people have to quit
smoking, we just don't want
to breath in their smoke.

Thank-you for
letting me talk.

Jan. 17, 1985
John Mues

Good afternoon Chair-person
Keenan and members of the
committee,

My name is John Mues
and I'm a fifth grader at
Jefferson School in Helena,
MT.

I am here to testify for
the clean air act, house-
bill 183, because I have seen
proof that second hand
smoke can cause harmful
damage if you are around
it often.

33% of the people in this
country smoke.

So 67% of the people that
go to a place where there
isn't a no smoking area,
have to breath in smoky
air which is very annoying.

There is twice as much
tar and nicotine that goes
in the air than there is
inhaled in from one cigarette

If there could only be an area for non-smokers then they could breath air that is clean.

Thank you for your time.

Hello C Disarperson Keenan and members of the committee. My name is Jessica Love I'm a fifth grader at Jefferson School. I would like you to vote for this bill because, when a person has to breath another persons' smoke, they also have to breath nicotine to. Which leads to alot of problems. And a lot of people hate freathing it. Thank-you for letting me talk

Good afternoon Chairman Keenan and members of the committee,
I'm Jason Carpenter. I'm a sixth grader at Jefferson School in
Helena. I want House Bill 153 to pass because when I go to a
restaurant I want a no smoking section. I don't like smoking because
it smells, maybe I could get lung cancer, emphysema or other problems
if I'm around smokers a lot. Even when I sit near a person that's
smoking I get dizzy so I have to leave. Thank you.

Good Afternoon Chairperson Keenan and Members of the Committee,

My name is Wendy Hulet. I'm a sixth grade student at Jefferson School, here in Helena.

I am interested in House Bill #183 because I think that if people wanted to breathe second hand smoke, then they would smoke themselves.

Some people, such as I, have allergies to cigarette smoke. These people want to be able to relax in a nice restaurant, with nice food without getting headaches or up-set stomachs. People that are affected from cigarette smoke could go to another restaurant to eat, but that would not only up-set us (because that is our favorite place to eat) but it could also up-set the restaurant owner because he/she would be losing his/her customers.

People who smoke, have a larger chance of lung cancer, and people who have been breathing second hand smoke all of their lives do also.

We don't want to tell people to stop smoking but ask smokers to please don't smoke in restaurants near people who are affected ~~from~~ by cigarette smoke. It is only two-to-three hours at the most without smoking a cigarette, so with that in mind they could just wait until they left the restaurant before they smoke.

Thank-you for your attention

Chairperson Keenan and members of the committee. I am a sixth grader in Helena my name is Todd Knudson.

I feel strongly about HB 183 because I am allergic to smoke. I also have asthma. Smoke irritates my eyes and my stomach hurts. Short amounts of time are just as bad as long periods. It isn't worth eating in a restaurant if it's full of smoke.

70 percent of the people in Montana do not smoke. 30 percent do smoke; The majority doesn't. In a democracy the majority usually rules.

Studies show that second-hand smoke is worse than the smoke smokers inhale.

Compared to the smoke directly inhaled there is twice as much tar and nicotine from the end of a burning cigarette five times as much carbon

monoxide and 6 times as much ammo,
it also forces blood pressure up
and makes the heart beat
faster.

Please vote Do pass for
HB 183.

Thank you

Good afternoon, Chairperson Keenan and members of the committee. My name is Linda Dilansacs, I go to Jefferson School in Helena. When people go to a restaurant or any other public facility people want to enjoy what they are there for, not to breathe someone else's cigarette smoke. About three-fourths of the nicotine in a cigarette ends up in the air for other people to breathe when only a quarter enters the smoker's body. When a study in Japan was done they found that the non-smoking members of a family faced four times the expected risk of developing lung cancer. Please vote "yes" for HB 183. Thank you for your time.

Good afternoon Chairperson Keenan & members of the committee,

My name is Perry Keffelinger, I'm a 5th grader and I am interested in HB 183. I would like you to vote for it. One of the reasons I would like you to vote for it is because some people have allergies from it and plenty die from it. Another reason I would like you to vote for it is that I don't like it coming into my face.

Just imagine this -

You're in "K-Mart" getting some super glue but this lady is blocking the glue and smoking. You say, "excuse me, but could I please grab the glue?" she says, "just a second I was here first." The real problem is she's smoking heavily.

After 3 minutes she leaves. You've consumed all that second-hand smoke.

That night you go to "Pizza Hut" with some friends and ask for a non-smoking section. The waiter says uh... ok and seats you next to two smokers.

After you're finished you're "Personal Pizza" and coughing from the smoke you go home. You've consumed second-hand smoke from 4 people and that is about 8 cigarettes.

So now you sort of know what we're talking

Good after noon Chair person Keenan
and members of the committee. My name is
Brian Curtis I'm a fifth grader at Jefferson
school. I want you to vote for H.B. 183
because a study found that the
nonsmokers wives of smokers faced four
times the risk of lung cancer. Thirty-
five states have laws that limit
smoking. 33-45% more work days
are lost by smokers than people who
never smoked. Thank you for letting
me talk.

Good afternoon Chairperson Keenan and members of the committee,

My name is Joshua Lewis, I am a fifth grader at Jefferson School.

We are working on a smoking-bill, it is House bill #183. I think it should be passed, not just for my benefit but for other non-smokers benefits.

The bill will mean that there will be no-smoking-areas in all public facilities.

The bill will not permit smokers from smoking in public facilities, but it will let them smoke in assigned smoking areas. Thank you for letting me speak

Goodafternoon Chairperson Keenan and members
of the Committee.

My name is Jaso Miles Jam a sixth grader at
Jefferson Elementary School in Helena, Montana. My
class and I are trying to pass the bill to have
a no-smoking area in public places. I feel strongly
about this bill because if I go to a department store
that allows smoking I usually leave because it makes
me feel very ill.

Lots of people smoke in the world. I know we can't
stop people from smoking all together but at least
we can have a no-smoking area where we go.

People don't realize when they are smoking ~~that~~
they're hurting their lungs very badly, and there also
hurting mine.

Thank you

Good afternoon

Chairperson Keenan and members of the committee, My name is Gair Groger. I am in the fifth grade at Jefferson School here in Helena. I would like you to vote for House Bill 183. I feel strongly about this bill because I think that nonsmokers should have the right to breath clean air and that each public place should at least have a nonsmoking area reserved for nonsmokers. Over 80 percent of all lung cancers occur in smokers. I hope you feel the same way I do, I would appreciate if you would vote for H.B. 183

Thank you

Good afternoon chairperson Keenan
and members of the committee my
name is Barrett Adams and I am
in the fifth grade in Helena.

I am testifying for HB. 183 for many
reasons one, test show that compared
to the smoke inhaled by a smoker
a non-smoker breaths in twice as
much tar and nicotine from the end
of a burning cigarette, five times
as much carbon monoxide, and
46 times as much ammonia, also
Dr U.S. Aronow of Long Beach
Veterans Hospital has studied the
influence of passive smoking
on men who have coronary artery
disease angina pain during exertion.
Exposure to a room with smokers
significantly decreased the amount
of exercise the men could do
before the pain started he also
noted an increase in blood pressure
and irregular heart beats.

Thank you

Good afternoon chairperson Keenan
and members of the committee my
name is Barrett Adams and I am
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disease angina pain during exertion.
Exposure to a room with smokers
significantly decreased the amount
of exercise the men could do
before the pain started he also
noted an increase in blood pressure
and irregular heart beats.

Thank you

Hello I am Chris Nicholson from Jefferson School
3rd grade Helena. I am here to talk about smoking.
Not only is it bad for your health but the other people
that don't smoke breathe it too. It's called secondhand
smoking. If you're smoking and the person next to you
doesn't then they're still breathing it. The House bill 1-83 says
that there is no smoking except in designated areas. A lot
of the people that can't smoke are complaining about
to much smoke in the air. I know some people who
used to smoke two packs a day. On the other hand the
people that don't smoke could probably have
a lot of fun for celebration. So please vote for House
1-83.

Thank you

I am from Jefferson School in Mrs. Marianne
third grade Helena Montana.

I think this law should be passed because no smoking
designated areas for good. When I go out to eat I like
the places with no smoking sections other wise some times smoke
up the whole place. When those cigarettes are so cool and then
you get sick and cough alot, you don't look or feel as good
as you did when you bought them.

That's why I hope you vote for House Bill 1-83

3rd
Louis Eabb Jan 18, 1985 Jefferson School Heiluhu

I think smoking is bad for your health
I know because it makes you cough and
wings and it makes you feel like
you're going to die. You should stop.

Thank YOU

My Name is Dondie Louie Jefferson School
Heiluhu. Mr. Mrs. Mangan 3rd grade

I'm for the banter. Because if you go to a restaurant
and there is a no smoking sign And people around you
smoking. It really makes me feel like I'm bothering their eyes. I
don't like to be bothered. The people around you are
suffering from the smoke. I don't want you to bother me, do I!
It's your smoke that is ruin your lungs.

And I want you to stop, this time.

Thank you for your letter.

I am ^{Wesman} ~~Jerry~~ a man as far as person should be
he and M.T. I - not smoking should
be allowed be come it very well I do not
like - it all and I am kill people that
do - these be good - they have some body
in the family that smoke in that smoke
than brother and when - gets to the
line - I would not smoke in the end
with me and I would not smoke
and that's why I think there should
be, no more, no exception no smoking. And

$$na \leq ya$$

I am Tim from Jefferson School. Letra Martinez. I am in
 Third grade. And I am eight.

I Think in at least one place in all buildings. Because if I went to a building, I would not want smoke in my eyes. I went to a restaurant, and the waiter in front of me was smoking. I'm allergic to smoke. Smoking can kill a person. I will never even smoke. My grandmother smoked before but she has stopped now. My aunt used to smoke but she quit a year ago and the lady told her not to smoke and she quit. There should be no place in every building there is no smoking areas. Thank you.

My name is Tom Dempsey From Helena, Montana
Jefferson School 3rd grade

I think smoking is bad for your health because of the smoke it smells bad I hope people will stop smoking because other people don't like it. I think that stores should stop selling cigarettes they are not good for you. I think that people should not smoke any more if I smoked I would stop because other people don't like it except in no smoking areas.

Thank you

He says that the law is in violation of that En-
dowed Fund Act of 1890 -

— I like people who do not let themselves smoke. I like the smoking
circle. The circle is the circle around a person that is smoking
and is the circle and is not just a circle. And another
circle is the circle that are smoking can get large
and other kind of circle. So the what smoking can
do is just like for the people that are smoking and
the people just right are smoking, and the people
just right are not. So please if you want to
and find your own smoking, please do not smoke.

Th. Kyou. var. ...

From Patrick Naseem thired- grade
Managhan Jefferson School Helena
Montana

Pat Jan. 10, 1985.

I think there should be no
smoking areas in public.
becus it is bad for your health.
it is also bad for your lungs.
it can also give a person lung
dis. becus it can bother another
person. it can also cause peop-
to die. and that's why I think
there should be no smoking. it can
also cause Hart Cancer. thank you
House bill 183. thank you

I'm sorry for my English. I am not a
native speaker.
Miss Managhan's third grade
Helena Montana 59601
I think there should be
no smoking in public places. because
becus it is bad for your health. it can
also give a person lung dis. becus it
can bother another person. it can also
cause peop- to die. and that's why I think
there should be no smoking. it can
also cause Hart Cancer. thank you
House bill 183. thank you

Thank you

I am glad to hear from you and hope you are well.
I have been thinking about you very much lately.
I hope you are happy and healthy.

Trial	Control	MCI	AD
1	95	85	75
2	95	80	70
3	95	75	65
4	95	70	60
5	95	65	55

[illegible]

Journal of Management Studies, 19(1), 67-80.

I am a 10th grade student from
Jesse Travis High School Jan. 18, 1985

I would like to testify for the HP 183
because 2nd hand smoking is bad for your
health. So it is bad for other people's, but
cigarettes smoke in their lungs so don't
smoke it will help other people
including you so that's why you
should vote for me on 183.

I hate you

My name is Tara Lynn I am from
School Helena Mont.

I have been to many places, because I
you know, when you are in the country, the
can. People there are not very friendly
like the people in the city. I am sitting in the
at the moment. And I am very happy.
Tara Lynn

1) What is the difference between a
primary and a secondary
source of information?
A primary source is a source of information that is
directly from the original source. A secondary
source is a source of information that is derived
from a primary source. For example, a book
about the life of a person is a secondary source
because it is derived from the primary source
of the person's life.

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

I can type & talk before smoking in the
fashion. You insist I hope you think
before smoking. You go & smoke & drink before
smoking in the red area it's good for
signs please don't second hand smoke. It's bad
for you & children. That's what I think too
Bill 183 smoke 10000

Thank you.

Hello My name is Adam Jacobs and I am from Helen, MA.
I go to Jefferson school and I am in third grade.

I don't think people should smoke in public places except in
designated areas because it can ruin lives and give people
cancer. I hope all you people people don't smoke.

Please vote for K.D. 1/2

Thank you

Montana Society for Respiratory Therapy



Transwestern II - Suite 100
490 N. 31st Street
Billings, Montana 59101

February 1, 1985

House Human Services and Aging Committee:

The Montana Society for Respiratory Therapy supports HB 183. As Therapists and Technicians we take care of many patients who cannot tolerate breathing second-hand smoke. Because they cannot breathe clean air in many public buildings, these patients are limited to where they can go. For the sake of these patients, and because we recognize the importance to everyone of breathing only clean air, the Respiratory Therapists and Technicians of Montana support this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leonard Bates". The ink is dark and the signature is fluid.

Leonard Bates
President

LB:ig

FEB 4 1985
REC'D

GREAT FALLS CLINIC

P. O. BOX 5012
1220 CENTRAL AVENUE
GREAT FALLS, MONTANA 59403
PHONE (406) 454-2171

January 28, 1985

Mr. Leonard Bates
Vo-Tech Center
2100 16 Avenue S.
Great Falls, MT 59405

To whom it may concern:

I am writing in support of the Montana Indoor Clean Air Act. I am a practicing chest physician and I have had abundant opportunities to observe the adverse consequences of cigarette smoke, both in the smoker and in the unfortunate victims of passive smoking. I have shared in the anguish of the non-smoking woman, who developed lung cancer. The only potential risk factor was the fact that she has lived with a smoking spouse for 40 years. I have listened to my non-smoking asthmatic patients repeatedly tell me about exacerbations of their asthma because of exposures to smoke-filled rooms in their working environments. I have seen babies with their multiple acute respiratory infections, which can be at least in part attributed to parenteral smoking. These serious health problems overshadow the nuisance of having an otherwise pleasurable experience ruined by a thoughtless smoker in a restaurant or other public place.

I feel it is high time to label cigarette smoking for what it is - a public health hazard. Other public health hazards have been successfully legislated for the protection of the general public and I feel that cigarette smoking falls into the same category. We have the capability of incarcerating tuberculosis patients so that they cannot contaminate the population. The adverse consequences of passive cigarette smoking are just as potentially dangerous.

Montana is frequently thought of as a conservative and somewhat backward state with social changes usually arriving in Montana long after they have swept most of the rest of the country. I hope that the current legislature will recognize their responsibility and legislate a strong Indoor Clean Air Act. Now this is an idea that has caught on in other states and is quickly gathering steam. I trust that you will

INTERNAL MEDICINE

F. J. ALLAIRE, M.D.
D. E. ANDERSON, M.D.
R. D. BLEVINS, M.D.
PULMONARY DISEASE
G. A. BUFFINGTON, M.D.
NEPHROLOGY
S. J. EFFERTZ, M.D.
RHEUMATOLOGY
J. D. EIDSON, M.D.
K. A. GUTER, M.D.
ONCOLOGY
W. H. LABUNETZ, M.D.
NEUROLOGY—EEG
T. J. LENZ, M.D.
W. N. MILLER, M.D.
GASTROENTEROLOGY
W. N. PERSON, M.D.
T. W. ROSENBAUM, M.D.
NEPHROLOGY
J. D. WATSON, M.D.
CARDIOLOGY

OBSTETRICS AND GYNECOLOGY

R. E. ASMUSSEN, M.D.
P. L. BURLEIGH, M.D.
F. J. HANDWERK, M.D.
R. L. MCCLURE, M.D.
G. K. PHILLIPS, M.D.

PEDIATRICS

J. A. CURTIS, M.D.
J. M. EICHNER, M.D.
N. C. GERRITY, M.D.
J. R. HALSETH, M.D.
J. P. HINZ, M.D.

PSYCHIATRY

D. E. ENGSTROM, M.D.

PSYCHOLOGY

E. E. SHUBAT, PH. D.

SURGERY

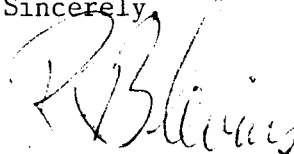
W. P. HORST, M.D.
UROLOGY
R. E. LAURITZEN, M.D.
GENERAL AND VASCULAR
J. E. MUNGAS, M.D.
VASCULAR SURGERY
L. M. TAYLOR, M.D.
GENERAL AND THORACIC
W. C. VASHAW, M.D.
GENERAL AND VASCULAR

ADMINISTRATION

W. D. TAYLOR
M. D. MISSIMER

not be misled by the erroneous tobacco company advertisements, which would tend to make one think that there remains controversy about the adverse consequences of cigarette smoking and passive cigarette smoking. The scientific evidence is irrefutable and mounting daily concerning the adverse health consequences of this habit. I solicit your wholehearted support for a strong Indoor Clean Air Act.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Blevins', written over the word 'Sincerely,'.

RICHARD D. BLEVINS, M.D.

RDB/lb

We, the undersigned, support the Indoor Clean Air Act now before the legislature as we do not appreciate inhaling someone else's second-hand smoke,

- | | |
|-----------------------------|---------------------------------|
| 1. Margaret H. Poil | 22. Mrs Mary Langley |
| 2. Josephine Scheline | 23. Mrs Mary Langley |
| 3. Evelyn L. Meredith | 24. Elsa Chester |
| 4. Catherine Kutherford | 25. Clifford Huffman |
| 5. R. J. Selstad | 26. Mabel Howard |
| 6. Tom R. Selstad | 27. John Nathan |
| 7. Phyllis Selstad | 28. Clifford Huffman |
| 8. Alaina Tardale | 29. Alice Cox |
| 9. Vada Spener | 30. Frances Huffman |
| 10. Marie Brooten | 31. Marie Laubner |
| 11. Alma Brunner | 32. Roscoe H. Canon |
| 12. Edith Spener | 33. Clifford Huffman |
| 13. But Spener | 34. |
| 14. Ellen Campbell | 35. |
| 15. Marg Campbell | 36. |
| 16. Earl Howard | 37. |
| 17. Wallace Rutherford | 38. |
| 18. Leonard H. Poil | 39. |
| 19. Margaret Hefheimer | 40. |
| 20. Ethel Polte | 41. |
| 21. Bertha Pilgeram | 42. |



MISSOULA CITY-COUNTY HEALTH DEPARTMENT



301 West Alder • Missoula, Montana 59802 • Ph. (406) 721-5700

February 4, 1985

MEMO TO: Nancy Keenan, Chairman, Human Services and Aging Committee

FROM: Dan Corti, Missoula City-County Health Department

SUBJECT: H.B. 183

I am Dan Corti, speaking on behalf of the Missoula City-County Health Department as a proponent of House Bill 183.

The benefits to public health which can be attained by enactment of this bill are well documented. The dangers of passive smoking are well documented.

I am not here to persuade you of the need for this type of legislation, as I feel you are already convinced of the need. I am here to request your consideration of how exactly this act is going to be enforced.

Ultimately local health departments are going to bear the responsibility for insuring compliance with this act. To do this without additional compensation is to do the job poorly or not at all. One method which the Missoula Health Department supports is to levy a higher tobacco tax and disperse the resulting funds to local health departments proportionally, based on population. The increase in the tobacco tax would pay for the increased field work necessary under this act.

Another area in which the Missoula Health Department recommends modification of this act is Section 107, Subsection (3). To require a no-smoking section in a room seating 7 people is to have a requirement which serves little purpose. As a minimum, our Department recommends an exemption for establishments seating 15 or fewer members of the public or having 225 square feet of seating area.

The increase in the number of seats allowed under the exemption would enable establishments to designate a realistic no-smoking area. The problems associated with enforcement of this act would be somewhat alleviated if establishment owners perceived that a benefit would result. To require a no-smoking area in 95 square feet of floor space is ineffective, and expansion of the area or seating limitation exemption would be reasonable in light of ease of enforcement and protection of public health.

Anthony KENSELL, Plaintiff-Appellant,

v.

STATE OF OKLAHOMA; Oklahoma Department of Human Services; the Honorable George Nigh, Governor of Oklahoma; Reginald D. Barnes, Chairman, Oklahoma Public Welfare Commission; Lloyd E. Rader, Director, Oklahoma Department of Human Services; Clifford E. Burns, Executive Assistant Coordinator; Lowell E. Green, Executive Assistant Coordinator; Raymond Nance, Disability Insurance Unit Program Administrator; Thurma Fiegel, M.D., Chief Medical Consultant of Disability Insurance Unit; Peggy Ezernack, Disability Insurance Unit Supervisor, Defendants-Appellees.

No. 82-1361.

United States Court of Appeals,
Tenth Circuit.

Sept. 13, 1983.

Employee of the state of Oklahoma brought action against the state and various officers and employees thereof seeking damages and injunctive relief arising from defendants' failure to prohibit smoking in the area in which he worked. The United States District Court for the Western District of Oklahoma, Ralph G. Thompson, J., granted defendants' motion to dismiss for failure to state a claim upon which relief could be granted, and plaintiff appealed. The Court of Appeals, Logan, Circuit Judge, held that plaintiff could not prove that he was deprived of a federal right.

Affirmed.

Civil Rights ⇐ 13.13(3)

Civil rights claimant who allegedly suffered from respiratory and cardiovascular ailments and who sought damages and in-

junction relief against his employer, the state of Oklahoma, and various officers and employees thereof failed to prove that he was deprived of a federal right by defendants' failure to prohibit smoking in the area where he worked. 42 U.S.C.A. § 1983.

Sylvia Marks-Barnett, Oklahoma City, Okl., for plaintiff-appellant.

David A. Brown, Oklahoma Dept. of Human Services, Oklahoma City, Okl., for defendant-appellee Oklahoma Dept. of Social Services.

Jan Eric Cartwright, Atty. Gen., John E. Douglas, Asst. Atty. Gen., Oklahoma City, Okl., for defendants-appellees Nigh and State of Okl.

Before SETH, Chief Judge and LOGAN, and SEYMOUR, Circuit Judges.

LOGAN, Circuit Judge.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed.R. App.P. 34(a); Tenth Cir.R. 10(e). The cause is therefore ordered submitted without oral argument.

Plaintiff L. Anthony Kensell appeals a judgment granting a motion to dismiss his amended complaint for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). Alleging that he suffers from respiratory and cardiovascular ailments, the plaintiff brought suit under 42 U.S.C. § 1983, claiming that the State of Oklahoma and various officers and employees of the State of Oklahoma violated his constitutional rights under the First, Fifth, Ninth, and Fourteenth Amendments by failing to prohibit smoking in the area where plaintiff worked at the Oklahoma Department of Human Services. He sought damages and injunctive relief.¹

1. The trial court correctly noted that, regardless of the merits of Kensell's complaint, the Eleventh Amendment would require dismissal of the State of Oklahoma as a defendant and

dismissal of the claim for damages against state officers acting in their official capacity. *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to recover. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). We affirm the district court's dismissal of the complaint; clearly the plaintiff could not prove that he was deprived of a federal right.

The plaintiff asserts that the defendants' failure to provide a smoke-free workplace violated his First Amendment rights because the smoke interfered with his ability to think. In support of that argument, appellant cites only *Rogers v. Okin*, 478 F.Supp. 1342 (D.Mass.1979), *aff'd in part, rev'd in part*, 634 F.2d 650 (1st Cir.1980), *vacated sub nom. Mills v. Rogers*, 457 U.S. 291, 102 S.Ct. 2442, 73 L.Ed.2d 16 (1982), a class action brought by patients at a Massachusetts state mental institution. Part of the relief those patients sought was an injunction against the forcible injection of psychotropic drugs. The district court held that the right to think was an aspect of the right of privacy, with its roots in the First Amendment, and that, absent an emergency, forcible injections of such drugs violated the patients' right to think. *Id.* at 1367.

The plaintiff also claims that by allowing smoking in his workplace the defendants assaulted him and thereby deprived him of his constitutional rights. In support he cites cases in which police and prison personnel have been held liable under section 1983 for assaults against persons in their custody. Finally, the plaintiff alleges that he was deprived of a property right in his state job because his only options were to endure cigarette smoke or quit. We note that the plaintiff still is an employee of the Department of Human Resources; thus, he has no constructive discharge claim. His contention that he must quit his job or endure the smoke is legally indistinguishable from his claim that his constitutional rights are violated by his being assaulted on the job by cigarette smoke.

The intrusions upon the plaintiff's person resulting from working with fellow servants who smoke is a far cry from forcible

injections of mind altering drugs and assaults committed by police or prison officials to intimidate or punish persons in their custody. This is not a case in which governmental officers are abusing power they possess only because the government is sovereign. In essence, the plaintiff has voluntarily accepted employment in an office in which he knew or should have known other employees smoke. Upon discovering that he is allergic to smoke or that it exacerbates his health problems, instead of quitting or transferring he seeks to force his employer to install a no-smoking rule in the office or to segregate smokers from nonsmokers. The state as his employer no doubt has the power to grant his request. As sovereign, it can make exposing him to smoke a tort, see *Shimp v. New Jersey Bell Telephone Co.*, 145 N.J.Super. 516, 368 A.2d 408 (1976), or a crime. See Okla.Stat. Ann. tit. 21, § 1247. We are certain, however, that the United States Constitution does not empower the federal judiciary, upon the plaintiff's application, to impose no-smoking rules in the plaintiff's workplace. To do so would support the most extreme expectations of the critics who fear the federal judiciary as a superlegislature promulgating social change under the guise of securing constitutional rights. *Accord Fed. Employees For Nonsmokers' Rights (FENSR) v. United States*, 446 F.Supp. 181 (D.D.C. 1978), *aff'd mem.*, 598 F.2d 310 (D.C.Cir. 1979); *Gasper v. Louisiana Stadium and Exposition Dist.*, 418 F.Supp. 716 (E.D.La. 1976), *aff'd*, 577 F.2d 897 (5th Cir.1978).

The plaintiff appears to have eliminated his pendent state claims when he amended his complaint. In any event, when federal claims are dismissed before trial, pendent state claims should be dismissed as well. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966).

AFFIRMED.



race." It would appear that the "C's" got on the registration list marked Exhibit 3 long after Ross was tried.

It would be difficult to consider the above facts and conclude that Ross has made a prima facie showing of systematic exclusion of blacks from juries in Mississippi County. While there may be underrepresentation of blacks in the master jury list, there is no credible evidence of deliberate exclusion. The evidence was to the contrary that when a black was drawn he was left on the venire. In any event, respondent argues that the courts must look to the jury panel and not the master jury list. Two of the twelve jurors who convicted Ross were black (16.6%). Four of the twenty-nine who comprised the venire were black (13.7%). These numbers are not at all disproportionate when compared to the number of blacks eligible for jury service.

[3] Although critical inquiry goes to underrepresentation or exclusion in deciding the questions presented by this case, the ultimate question is whether petitioner was accorded his constitutional right to trial by an impartial jury. It may be necessary to concentrate on the selection process when one is tried before an all white jury. That is not the case here. The Court has carefully reviewed the transcript of petitioner's trial. If error did exist in the master jury list, that error was corrected when the jury panel was selected. Ross received a fair trial before an impartial jury.

The application for habeas corpus relief will be denied.



FEDERAL EMPLOYEES FOR NON-SMOKERS' RIGHTS (FENSr) et al., Plaintiffs,

v.

UNITED STATES of America et al., Defendants.

Civ. A. No. 77-1059.

**United States District Court,
District of Columbia.**

March 1, 1978.

Groups opposed to smoking, and non-smokers employed by federal agencies brought action seeking declaratory and injunctive relief restricting smoking in federal buildings to designated areas. On plaintiffs' motion for summary judgment and defendants' motion for judgment on the pleadings, the District Court, Charles R. Richey, J., held that: (1) Occupational Safety and Health Act does not provide private cause of action against federal employers; (2) plaintiffs failed to state a claim upon which relief could be granted under First and Fifth Amendments and (3) parties should brief fully issue whether court had jurisdiction over common-law claim against federal employers for breach of duty to provide safe place to work.

Defendants' motion granted as to three counts and denied as to one count.

1. Action ⇌ 3

In determining whether a private cause of action can be implied from a statute, court must focus upon language of statute and, if unclear, legislative history to ascertain whether Congress intended to allow private litigants to sue.

2. Labor Relations ⇌ 27

Although the Occupational Safety and Health Act does require federal agencies to provide safe and healthful places and conditions of employment, Act confers no authority upon the Secretary of Labor to take enforcement action against federal agencies. Occupational Safety and Health Act

Kenneth O. GASPER et al.,

v.

LOUISIANA STADIUM AND EXPOSITION DISTRICT et al.

Civ. A. No. 75-3732.

United States District Court,
E. D. Louisiana.

Sept. 8, 1976.

Nonsmokers brought an action against the operators of the Louisiana superdome to enjoin the allowance of tobacco smoking in the superdome during events staged therein. The District Court, Jack M. Gordon, J., held that the complaint failed to state a claim upon which relief could be granted under the Civil Rights Act of 1871.

Complaint dismissed.

1. Constitutional Law ⇐90(1)

Just as First Amendment protects against the making of any law which would abridge freedom of speech or press, it also protects against any law or activity which would interfere with or contract concomitant rights to receive those thoughts disseminated under protection of First Amendment. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇐83(1)

Nonsmokers had no constitutional right to require that operators of Louisiana superdome prohibit smoking in superdome on theory that tobacco smoke in superdome created chilling effect upon exercise of nonsmokers' First Amendment rights in that they were required to breathe harmful smoke as precondition to enjoying events held in stadium. U.S.C.A.Const. Amend. 1.

3. Constitutional Law ⇐255(2), 278(1)

Nonsmokers' Fifth and Fourteenth Amendment rights not to be deprived of life, liberty and property without due process of law were not violated by policy of Louisiana superdome of permitting persons attending events in superdome to smoke. U.S.C.A.Const. Amendments. 5, 14.

4. Constitutional Law ⇐82

Constitution does not provide judicial remedies for every social and economic ill.

5. Constitutional Law ⇐82

Right to breathe clean air, free of allegedly harmful tobacco smoke, was not fundamental right protected by Ninth Amendment. U.S.C.A.Const. Amend. 9.

6. Civil Rights ⇐13.12(7)

Cause of action under Civil Rights Act of 1871 was not stated by complaint by nonsmokers alleging that they were deprived of constitutional rights by policy of Louisiana superdome in allowing patrons to smoke tobacco products within superdome. 42 U.S.C.A. § 1983.

Jacob J. Meyer, Coleman, Dutrey, Thomson, Meyer & Jurisich, New Orleans, La., for plaintiffs.

Harry McCall, Jr., Chaffe, McCall, Phillips, Toler & Sarpy, and Kendall Vick, Asst. Atty. Gen., Dept. of Justice, State of Louisiana, New Orleans, La., for defendants.

J. Harrison Henderson, III, Guste, Barnett & Colomb, New Orleans, La., for intervenor, American Lung Association of Louisiana, Inc.

JACK M. GORDON, District Judge.

This action is brought pursuant to the provisions of 42 U.S.C., § 1983, and 28 U.S.C., § 1343, in an attempt by the named plaintiffs to enjoin the Louisiana Stadium and Exposition District from continuing to allow tobacco-smoking in the Louisiana Superdome during events staged therein. The Louisiana Superdome is an enclosed arena located in New Orleans, Louisiana, owned and maintained by a political subdivision of the State of Louisiana known as the Louisiana Stadium and Exposition District (hereinafter referred to as "LSED"). The building is a public, multipurpose facility, and since its completion, has been used for many events ranging from concerts to Mardi Gras parades.



AMERICAN LUNG ASSOCIATION OF MONTANA

Christmas Seal Bldg. — 825 Helena Ave.
Helena, MT 59601 — Ph. 442-6556

EARL W. THOMAS
EXECUTIVE DIRECTOR

WHY IS H.B. 183 NEEDED?

LESS THAN 30%^{*1} OF ALL ADULT MONTANANS SMOKE.

THE OTHER 70%, AND ALL THOSE KIDS, WOULD LIKE SOME SAY

IN THE QUALITY OF THE AIR THEY BREATHE TO LIVE. THEY HOPE THAT

"MINORITY RULE" HAS NOT BECOME THE "MONTANA WAY".

ONLY ONE HALF OF THE NATIONS' SMOKERS (55%)^{*2} AGREE THEY

SHOULD NOT SMOKE IN THE PRESENCE OF NONSMOKERS.

THE SECOND HAND SMOKE OF THOSE WHO REFUSE TO ACCOMODATE
NONSMOKERS HURTS US ALL.

NONSMOKERS FEEL COMPELLED TO SEEK SUPPORT.

*1 Healthy Montanans: 1990 Perspectives, Dec. 1984, MT Dept. of
Health and Environmental Sciences

*2 Gallup Poll, April 1983

FACTS ABOUT NONSMOKERS

More than 30 million Americans have kicked the cigarette habit. Millions more are trying. Among adults, only one in three still smokes. In the population as a whole, it's one in four. Even counting cigar and pipe smokers, nonsmokers are a clear majority.

Nonsmokers are no longer a silent majority, though. They mind if you smoke. And they're speaking up. They see tobacco smoke as a pollutant that defiles their air. And new research gives them ammunition to defend themselves. It shows that second-hand smoke can have harmful effects on nonsmokers.

OPEN BURNING

Tobacco smoke is a very complex mixture. There are hundreds of chemical compounds in burning tobacco.

Some of the most hazardous compounds are tar, nicotine, carbon monoxide, cadmium, nitrogen dioxide, ammonia, benzene, formaldehyde, and hydrogen sulphide. And dozens of others. Any one alone can assault the body and cause trouble. Together, they make smoking the menace it is.

Even when a smoker inhales, researchers have calculated that two-thirds of the smoke from the burning cigarette goes into the environment. The percentage of pollution from cigar and pipe smoke is even higher.

SIDESTREAM SMOKE

Every time anyone lights a cigarette or cigar or pipe, tobacco smoke enters the atmosphere from two sources. Most important for nonsmokers, there is *sidestream* smoke, which goes directly into the air from the burning end. Then, there is *mainstream* smoke, which the smoker pulls through the mouthpiece when he or she inhales or puffs. Nonsmokers are also exposed to mainstream smoke after the smoker exhales it.

A cigarette smoker inhales—and exhales—mainstream smoke eight or nine times with each cigarette for a total of about 24 seconds. But the cigarette burns for 12 minutes and pollutes the air continuously with sidestream

smoke. Smokers can keep cigars and pipes burning for a much longer time. The pollution lingers long after.

Sidestream smoke—the smoke from the burning end—has higher concentrations of noxious compounds than the mainstream smoke inhaled by the smoker. Some studies show there is *twice* as much tar and nicotine in sidestream smoke compared to mainstream. And *three* times as much of a compound called 3-4 benzpyrene, which is suspected as a cancer-causing agent. *Five* times as much carbon monoxide, which robs the blood of oxygen. And 50 times as much ammonia.

There is also evidence that there is even more cadmium in sidestream smoke than in mainstream. Cadmium is now under investigation as one of the compounds in cigarette smoke that damages the air sacs of the lungs and causes emphysema.

Before the nonsmoker inhales secondhand smoke, however, some of the high concentrations of hazardous substances are diluted in the ambient air. The smoker, on the other hand, inhales both firsthand and secondhand smoke.

CARBON MONOXIDE

Carbon monoxide is a colorless, odorless gas created by incomplete combustion. Car exhaust puts it in the air. So does tobacco smoke.

While it is difficult to measure the amount of tar or cadmium in someone's lungs or body, it is relatively easy to measure the levels of carbon monoxide in the blood.

When you inhale carbon monoxide, the gas bumps oxygen molecules out of your red blood cells and forms a new compound called carboxyhemoglobin. As the amount of this compound increases in your blood, the body becomes starved for oxygen.

One study shows that after only thirty minutes in a smoke-filled room the carbon monoxide level in the nonsmoker's blood increases as well as the blood pressure and heart beat.

HAZARDOUS LEVELS

What levels of carbon monoxide are hazardous? In industry, the maximum concentrations of carbon monoxide in the air cannot average out to more than 50 p.p.m. (parts per million); and efforts are now underway to reduce the maximum. The Federal Air Quality Standards for the *outside* air limit concentrations to an average of 9 p.p.m.

Given this as a baseline, how much carbon monoxide do cigarettes send into the air?

Researchers have found that smoking seven cigarettes in one hour—even in a ventilated room—created carbon monoxide levels of 20 p.p.m. In the seat next to the smoker, the level shot up to 90 p.p.m., almost twice the maximum set for industry. Smoking ten cigarettes in an enclosed car also produced carbon monoxide levels up to 90 p.p.m. The carbon monoxide level in the blood of nonsmokers and smokers in the car *doubled*.

When nonsmokers were exposed to these levels, the carbon monoxide level in their blood not only doubled within the first hour, but *doubled again during the second hour*.

When nonsmokers leave a smoky environment, it takes hours for the carbon monoxide to leave the body. Unlike oxygen which is breathed in and then out again in minutes, carbon monoxide in the blood lasts for hours. After three or four hours, half of the excess carbon monoxide is still in the bloodstream.

EFFECTS OF THE GAS

Some studies indicate that with these levels of carbon monoxide in the blood, people—including drivers—cannot distinguish relative brightness, lose some ability to judge time intervals, and take longer to respond to tail-lights. They also show impaired performance on some psychomotor tests. These levels of carbon monoxide in the blood create physiologic stress in heart disease patients. The resultant lack of oxygen can also add distress for people who already have lung disease.

Animals exposed to carbon monoxide (levels from 50 to 100 p.p.m.) continuously for weeks showed damage to heart and brain.

OTHER COMPOUNDS

Not enough research has been done on effects of other compounds in tobacco smoke. For example, hydrogen cyanide is a poison that attacks respiratory enzymes. It is not found in ordinary air pollution. But the concentration in cigarette smoke itself is 1600 p.p.m. Long-term exposure to levels above 10 p.p.m. is considered dangerous.

Nitrogen dioxide is an acutely irritating gas that can damage the lungs. Levels of 5 p.p.m. in the air are considered dangerous. Cigarette smoke contains 250 p.p.m.

ANIMAL RESEARCH

Some researchers have exposed mice to second-hand smoke over a period of one or two years. A significant number of mice developed severe bronchitis. Rabbits exposed to smoke from 20 cigarettes per day for two to five years developed emphysema.

Dogs exposed to cigarette smoke ten times per week for one year suffered a breakdown in lung tissues. Rats exposed to second-hand smoke for 45 minutes a day for two to six months showed twice as many lung tumors as did a control group.

The exact parallel between animal and human exposure in smoke-filled rooms is hard to determine at this stage of research. But some implications are serious indeed.

SMOKE AT THE WORKPLACE

A study of nonsmokers exposed to tobacco smoke at work for many years showed a dysfunction in the small airways of the lungs of the nonsmokers. It is not yet clear whether abnormalities in the small airways precede the kind of changes that characterize chronic lung disease like emphysema. But very frequently the beginning changes of chronic lung diseases start in the small airways.

EFFECTS ON CHILDREN

Babies and young children breathe more rapidly than adults. Because of this higher breathing rate, they inhale more air—and more pollution—in comparison to their total

body we Some studies show youngsters inhale two to three times as much of a pollutant per unit of body weight compared to adults. And this assault happens when young lungs are growing and developing.

One major study discovered that in their first year, babies of parents who smoke at home have a much higher incidence of lung disease, specifically bronchitis and pneumonia, than babies with nonsmoking parents.

A study of the lung function of children—aged five to nine—showed an adverse reaction in the small airways of children who had smoking parents compared with those whose parents were nonsmokers.

Parents who smoke at home can aggravate symptoms in some children with asthma and even trigger asthma episodes. Millions of people, adults as well as children, are sensitive to tobacco smoke and suffer smoke-caused asthma episodes. Parents should limit their smoking to separate rooms away from these children or, better yet, should quit smoking altogether.

Even among nonasthmatic children, a team of researchers found that respiratory illnesses happened twice as often to young children whose parents smoked at home compared to those with nonsmoking parents.

In a study of 441 nonsmokers divided into two groups—those with a history of allergies and those without—70 percent of both groups suffered from eye irritations caused by smoke. Even among the nonallergic groups, 30 percent developed headaches and nasal discomfort, while 25 percent experienced cough.

SECONDHAND SMOKE AND LUNG CANCER

Some studies have found an increased risk of lung cancer in nonsmoking wives married to men who smoke. Although the studies are too few as yet to conclude a definite association between secondhand smoke and lung cancer, the findings have raised concern. Since there are cancer-causing agents in cigarette smoke, it is not unreasonable to expect that inhaling these agents firsthand or second-

hand could cause disease. Exposure to tobacco smoke may be similar to exposure to radiation: there are no safe levels.

TOBACCO SMELLS

Contamination and odors are immediately created by such elements in tobacco smoke as ammonia and pyridine. Pyridine is a strong irritant that is produced when nicotine burns. The presence of a minute amount in the air produces distinctly unpleasant odors.

The contamination is so intense that when someone smokes in an air-conditioned environment, the air-conditioning demands can jump as much as 600 percent to control odor. Another intriguing finding from air-conditioning research is that the human body attracts tobacco smoke. Burning tobacco smoke creates a high electrical potential, whereas the water-filled human body has a low one. The smoke in a room gravitates and clings to people in much the same way as iron filings are drawn to a magnet.

And the odors linger on. Chemicals in tobacco smoke called aldehydes and ketones supply the penetrating smell, while the tars hold them to your skin and your clothes. But the smoker is not sensitive to the smell because of the destructive effects of smoke on the inner lining of his or her nose.

THE RIGHT TO BREATHE CLEAN AIR

Nonsmokers have the right to breathe clean air, free from harmful and irritating tobacco smoke. This right supersedes the right to smoke when the two conflict.

THE RIGHT TO SPEAK OUT

Nonsmokers have the right to express—firmly but politely—their adverse reactions to tobacco smoke. They have the right to voice their objections when smokers light up.

Nonsmokers have the right to act through legislative channels, social pressures or any other legitimate means—as individuals, or in groups—to prevent or discourage smokers from polluting the atmosphere and to seek the restriction of smoking in public places.

- Let family, friends, co-workers and strangers know you mind if they smoke.
- Put stickers, buttons, and signs in your home, car, and office. Request seating in nonsmoking sections when you travel.
- Support legislation to restrict smoking or set up smoke-free areas in public places.
- Ask your doctor and dentist to restrict smoking in their waiting rooms and to establish no-smoking regulations in all health care facilities, including hospitals.
- Propose no-smoking resolutions at organization meetings. Encourage hotels and restaurants to establish no-smoking areas.
- Contact your lung association to discuss ways to protect nonsmokers at work.

Second-Hand Smoke

Are you a nonsmoker who is shy about defending yourself against inconsiderate smokers? Or are you a smoker who doesn't realize the distress you inflict on nonsmokers? Find out the effects of tobacco smoke on nonsmokers.

Take A Look At The Facts †.

The Christmas Seal People

AMERICAN LUNG ASSOCIATION
Affiliate
The Christmas Seal People

#0006

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February 4, 1985

Committee on Human Services
& Aging
Montana House of Representatives
49th Legislative Session
State Capitol
Helena, Montana 59620

re: House Bill 183
Smoking in Public Places

Dear Chairman Keenan & Committee:

As many of you may recall from my previous appearances before your committee, I am the attorney-elderly legal services developer for Montana's senior citizens with the Seniors' Office of Legal & Ombudsman Services which is attached to the Governor's Office. The Administration has not taken a position on House Bill 183 and so when I was requested by Rep. Bob Ellerd to testify today in support of this bill, I am doing so on my own time and my views are not to be perceived as representing those of the Governor's Office.

I have been involved with the Montana Clean Indoor Air Act, Title 50, Chapter 40, Part 1, Montana Codes Annotated (MCA) which regulates smoking in public places since it was first enacted in the 1970's. At that time I served as an attorney with the Montana Department of Health & Environmental Sciences and was requested to provide assistance in drafting the bill since it concerned public health. In 1981 I had left the Department and began serving as the attorney for the elderly and continued to support strengthening this act out of a concern for those who suffer from respiratory diseases which are aggravated by smoking. Due to the aging process, many of the persons which suffer from these diseases are elderly. In the 1983 Montana Legislative Session, I supported House Bill 445 which was also introduced by Rep. Ellerd to strengthen the Montana Clean Indoor Air Act. It passed the House and almost passed the Senate that year.

You may ask why is it necessary for the Montana Legislature to consider legislation to regulate smoking in public places through a bill such as House Bill 183? In my opinion, scientific studies are providing the driving force as they continue to note the hazards, serious health hazards associated with "passive smoking" or the effects of smoke from smokers on non-smokers. I have included two articles with this testimony for your information on this subject, one from the March 29, 1983 edition of the Great Falls Tribune, and another from the February, 1985 issue of Consumer Reports.

-- Letter to the House Comm. on
Human Services
Mt. House of Representatives
49th Legislative Session
February 4, 1985
Page 2
re: House Bill 445

In addition to the scientific studies which support effective laws regulating smoking in public places, Montana's State Constitution also recognizes the right of its citizens to a clean and healthful environment. Article II, Section 3, recognizes as one of our inalienable rights, the "right to a clean and healthful environment...." Furthermore, Article IX, Section 1, on the Protection and Improvement of the Environment and Natural Resources provides:

"(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The Legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." (emphasis added).

The Legislature has therefore been entrusted to take the necessary actions to provide for the protection of the state's citizens from health hazards. House Bill 183 does not ban all smoking in public places but it would require the managers of public places to designate an area within the public place that smoking would be prohibited. Many states are now taking steps to prohibit smoking in all but a few public places such as in Minnesota. This bill still recognizes the right of persons who desire to smoke to be able to smoke in most areas of a public place but it also recognizes the health hazards and irritation that many non-smokers suffer by providing them with an area in which smoking will not be allowed.


There are those who oppose requiring public places to designate non-smoking areas asserting that the operators or managers of public places should not be legislated into recognizing the rights of non-smokers. The marketplace would determine who would patronize businesses they say. This position is not a realistic one if we recognize that not all "public places" are restaurants or other businesses that the public has a choice to enter. Public places as defined in the Act also includes assembly and meeting rooms open to the public, auditoriums and offices. In addition, Montana as a state caters to tourists who often are uninformed as to which restaurants now offer designated non-smoking areas. If a tourist was in a restaurant that now offers no designated non-smoking areas, and if that tourist suffered from a respiratory disease and a smoker sat down at the next table, the tourist would have no choice but to leave in many instances regardless of whether or not he or she had finished the meal.

Letter to the House Comm. on
Human Services & Aging
Mt. House of Representatives
49th Legislative Session
February 4, 1985
Page 3
re: House Bill #183

Many employees at the present time who are allergic to cigarette smoke or who find it highly irritating to their eyes or lungs have no choice but to continue working in an unsafe environment because their employer is not required to designate a non-smoking area within their work place. House Bill #183 would help them by requiring their employer to take into consideration their right to work in a clean and healthful environment.

There are many other reasons for supporting this bill that I'm sure that the other witnesses today before you will address. I would conclude my testimony by summarizing my views that this bill should be supported by the scientific evidence on the hazards of second-hand smoking to non-smokers as well as the Montana Constitutional right to a "clean and healthful environment". I would hope that you as our elected legislators will implement our constitutional rights in this regard as Art. IX, Sec.1, Clause 2 charges you with the responsibility for doing. Thank you for your consideration of my views and the views of the majority of Montanans who are non-smokers.

Sincerely,


Doug Olson
Attorney
Helena

Attachments

Study reinforces claims about effects of passive smoking

PITTSBURGH (AP) — A comparison of cancer records at a hospital serving the Amish helps show that non-smokers who breathe smoke-filled air have a higher rate of lung cancer than those with little contact with smokers, a new study says.

The study concludes that a "negligible" incidence of lung cancer among the non-smoking Amish gives "additional evidence that passive smoking is associated with increased incidence of lung disease."

Dr. Gus H. Miller, a psychologist and mathematician who heads the Studies on Smoking clinic at Edinboro, surveyed 348 lung cancer cases at Lancaster General Hospital between 1971 and 1977.

The hospital serves Lancaster County, which has the nation's highest concentration of Amish, a strict religious sect whose members rarely smoke or mingle with outsiders.

The hospital's Cancer Registry, which records all cancer deaths and religious affiliation, shows only one of the 348 people who died of lung cancer during the period was Amish, and that person "was related to a cigar-smoking Amish man," Miller said.

Miller said Lancaster County physicians also have noticed that, unlike the general population, the Amish are almost free of lung disease.

"The most noticeable difference among the two populations was in the exposure to cigarette and tobacco smoke," Miller said. "Since the Amish lived in a closed society noted for its non-smoking behavior, there is nearly a complete absence of

tobacco smoke contaminants in their houses and work places.

"This condition is in contrast to non-Amish who, whether smokers or non-smokers, are constantly exposed to cigarette and tobacco smoke contaminants in their houses and places of employment," Miller said.

"Thus," he concluded, "the smokeless environment appears to be the most likely reason for the extremely low incidence of lung cancer in the Amish population."

Miller said his conclusion supports recent studies by scientists in the United States and Japan.

Miller said the Amish are "the purest non-smoking population" in the United States and were chosen for study over such other generally non-smoking groups as Mormons and Jehovah's Witnesses because the Amish live in concentrations and "are known for not intermingling with the non-Amish population."

"For more than a century, the Amish have resisted the temptation of cigarette smoking because of their religious convictions," he said.

However, Miller noted that a very few Amish men are cigar-smokers since tobacco is one of their major cash crops. In addition, he said, young Amish "have started to smoke cigarettes."

Lancaster County's population during the study period was about 349,000, which includes about 12,000 Amish, according to Miller. This ratio would presume at least 12 Amish deaths from lung cancer had the group contained smokers and non-smokers, he said.

Everyone knows that tobacco smoke annoys nonsmokers.
The question is, does it hurt them?

Objections to other people's smoke have not yet reached the fervor of the early 1600's, when smokers were routinely executed in Constantinople or subject to imprisonment and confiscation of property in Japan. But today's smoker is fast becoming a social pariah, banished to the rear sections of aircraft and barred from an increasing variety of public places.

Smarting eyes or reeking clothes from tobacco smoke have long vexed nonsmokers. But the current drive against smoking—especially in the workplace—has an added dimension: the fear that such smoke is an actual health hazard to the bystander.

10

As recently as 1979, the Surgeon General's report was largely reassuring. "[H]ealthy nonsmokers exposed to cigarette smoke have little or no physiologic response to the smoke," said the report, "and what response does occur may be due to psychological factors."

The vulnerable young

The most vulnerable of all to another person's smoking habit is the fetus, in cases where a pregnant woman smokes. There's ample evidence that maternal smoking during pregnancy increases the risk of miscarriage and stillbirth. The likelihood of delivering a stillborn child, for example, is twice as high for a heavy smoker as for a nonsmoker. Birthweight is also lower among infants of smokers, increasing the risk of health and developmental problems.

1

There's also evidence that a mother's smoking can affect the development of lung function in her children. Small but measurable deficits in the expected growth of lung function have been detected in both young and adolescent children of mothers who smoke. The deficits are not significant enough to affect the performance of the lungs, at least in the short run, says the latest

Apart from this vulnerable age group, there remains the question of how secondhand smoke affects healthy adults. This question is at the heart of the current debate about smoking on the job and in public places. It is here that the evidence becomes murky. But despite the lingering obscurity, some clarity has begun to emerge.

A basic question is how much tobacco smoke the nonsmoker passively inhales. Over the years, estimates have ranged from the equivalent of a fraction of a puff a day to the equivalent of more than a pack a day. The difference is crucial, because the hazards of smoking are strongly dose-related. The more heavily one smokes, the greater the risk.

Last September, the first large-scale study of passive smoking to use cotinine measurement appeared in *The New England Journal of Medicine*. Eight researchers at two medical schools in Japan reported their findings concerning 472 nonsmokers at home and at work.

The cotinine level associated with smoking one or two cigarettes a day occurred only among one group of non-smokers—those who worked with more than six smokers per room and who also lived in homes where more than a pack a day was consumed.

For U.S. nonsmokers, an obvious question is whether conditions in Japan are much different from those here. The study itself suggests an answer:

In the U.S., about 37 percent of men and 29 percent of women aged 17 and older are smokers. Accordingly, passive exposure to tobacco smoke in the Japanese study is likely to have been somewhat higher than typical conditions in the U.S. It's sensible to assume that some American nonsmokers experience the same type of heavy exposure that urban Japanese encounter, but the percentage here may be smaller.

Current debate about passive smoking has focused on the workplace, which can be regulated, rather than the home, which effectively can't be. But if the Japanese findings are correct, the heavy-tobacco smokers tend to be exposed to tobacco smoke in the home. Even nonsmokers working with more than six smokers in the same room did not exhibit the highest recorded cotinine level unless they also took a hefty dose of smoke at home.

Why should the home be such a significant source of exposure, even though the workplace may harbor more smokers per

On the job, there was again a significant difference in exposure between nonsmokers who worked with smokers and those who didn't. But average cotinine levels recorded at work tended to be lower than those recorded in homes.

Overall, the results suggest that fairly heavy passive exposure to tobacco smoke—especially in the home—may be equivalent to smoking one or two cigarettes a day.

"The smoking rate in the crowded urban environment of our samples was high," the authors report. "Approximately 78 percent of the men and 26 percent of the women in Japan smoke, so that passive smoking is often almost unavoidable in public places."

Home versus work

Current debate about passive smoking has focused on the workplace, which can be regulated, rather than the home, which effectively can't be. But if the Japanese findings are correct, the heavy-tobacco smokers who are exposed to tobacco smoke tend to be nonsmokers in the home. Even nonsmokers working with more than six smokers in the same room did not exhibit the highest recorded cotinine level unless they also took a hefty dose of smoke at home.

Why should the home be such a significant source of exposure, even though the workplace may harbor more smokers per

*Passive smoking
vs. smoking*

male

square foot? Often the primary reason is ventilation. According to a 1980 report in the Journal Science, a complete exchange of indoor and outdoor air may occur only once an hour in a private dwelling, about the same rate as for the worst-

The finding that some nonsmokers' exposure might be the equivalent of smoking one or two cigarettes a day still needs to be confirmed. Assuming that is true, how much of the exposure level, what are the potentially health effects? While no one

In search of a threshold

"critical values" of cigarette consumption for 11 specific diseases and for mortality in general. The critical value for each disease was the number of cigarettes average individuals could smoke daily without increasing their mortality risk measurably above that of nonsmokers.

cancers. The resulting values ranged from a low of 2½ cigarettes daily for throat cancer to 10 cigarettes daily for emphysema. For all causes of death combined, the critical value was two cigarettes a day. (The combined figure covers the effects of cigarette smoking on all causes of death, not just the 11 diseases specifically studied.)

At a cancer symposium in New York City in 1979, Dr. Gio Gori, then director of the NCI's Smoking and Health Program, took care to explain what the findings meant. He stressed that the chemical value of two cigarettes a day should not be interpreted as a "safe" level of smoking. Rather, it was a level of exposure at which mortality effects were not detectable. "This doesn't mean that we do not have toxic effects," said Gori. "It just simply says that, with the methods available to us, we probably cannot recognize them."

Extending the NCJ's findings to passive smoking may be premature, partly because of the form of the exposure. Very light smokers and passive smokers might inhale the same amount of smoke. But active smokers get low doses over a long period while active smokers get their dose in high intermittent bursts. Nevertheless, the NCJ study provides the only death evaluation to date on the effect of low doses of cigarette smoke. Essentially, the NCJ's conclusions suggest that passively inhaling the equivalent of one to two cigarettes a day will generally not produce any effects, especially large ones.

Courtesy of the American Lung Association
Of course, lung cancer is a deadly disease.
FEBRUARY 1985

rates are only one way to measure the health impact of exposure to tobacco smoke. Other possible effects, such as impairment of lung function or reduced resistance to infections, could also be important. But there have been no large-scale, well-controlled studies that suggest a threshold level for these effects, which are much harder to measure than death rates are.

Matters of the heart

The doses of toxic substances in mainstream smoke represent a demonstrated danger to the cardiovascular system. But most experts doubt that passive smoking plays a role in causing heart disease.

At an international conference of experts on smoking and health last April in Vienna, the participants concluded: "There is a high probability that cardiovascular damage due to passive smoking can be ruled out in healthy people."

Consequently, little attention is being focused on passive smoking and heart disease. In current research, the lung is where the action is.

Are the lungs at risk?

In March of 1980 the first large-scale study exploring possible effects of passive smoking on adults appeared in the *New England Journal of Medicine*. Researchers at the University of California, San Diego, reported the results of lung-function tests on 2100 middle-aged people entering a physical-fitness program. Tests were conducted on 200 nonsmokers who lived and worked in environments relatively free of tobacco smoke. Their scores were then compared with those of 200 nonsmokers who lived in similar "smoke-free" homes but were routinely exposed to tobacco smoke for 20 years or more at work. Both groups were also compared with smokers who didn't inhale, light smokers, moderate smokers, and heavy smokers.

In the most important segments of the test—forced vital capacity and initial expiratory flow rate—there was no significant difference between the two groups of nonsmokers. However, in another segment, which detects early signs of impairment in the small airways of the lungs, there was a statistically significant difference between nonsmokers who were passively exposed at work and those who weren't.

The passive smokers' scores did not fall into a range considered clinically significant (it is, indicative of possible disease). But their scores were similar to those of the light smokers.

chronic exposure to tobacco smoke at work "is deleterious to the nonsmoker and significantly reduces small-airways function."

The San Diego study has been both praised and criticized by experts on smoking and health. Many view it as breaking new ground but question its methodology or the clinical significance of its results.

In May of 1983, the Division of Lung Diseases of the National Heart, Lung, and Blood Institute sponsored a conference on the effect of passive smoking on respiratory function in adults and children. Participants from various fields of medicine and related disciplines reviewed the San Diego study and other published or ongoing research concerning the issue. They concluded the evidence suggested that the effect of passive smoking "varies from negligible to quite small." They also emphasized the importance of distinguishing between statistical significance and clinical significance.

Alarm over lung cancer

While the San Diego study attracted wide attention, a subsequent one on passive smoking drew even more. In January of 1981, a report in the *British Medical Journal* by Dr. Takeshi Hirayama of the National Cancer Center Research Institute in Tokyo raised a new specter.

The study involved 91,540 nonsmoking women in Japan. Hirayama reported that nonsmoking wives of men who smoked more than a pack a day had twice the risk of developing lung cancer as nonsmoking women married to nonsmokers. "These results," said Hirayama, "indicate the possible importance of passive or indirect smoking as one of the causal factors of lung cancer."

Soon after, a study conducted in Greece appeared in the *International Journal of Cancer*. It was small—involving only 214 subjects—and seriously flawed in methodology. But its findings were similar to those of Hirayama, thus fueling anxiety over the already worrisome data from Japan.

Within a few months, however, a large-scale study by the American Cancer Society, a longtime crusader against

smoking, produced very different results. Lawrence Garfinkel, of the society's Department of Epidemiology and Statistics, reported the findings in the June 1981 issue of the *Journal of the National Cancer Institute*.

Comparing lung-cancer rates experienced in a population of 176,739 nonsmoking women in the U.S., Garfinkel found no significant difference between the wives of smokers and nonsmokers. "Nonsmokers married to smoking husbands," he reported, "showed very little, if any, increased risk of lung cancer."

Why did the Hirayama and Garfinkel studies differ so much? Possibly because, in every study to date, the index of passive smoking has been questionable. "It may be misleading to classify a woman as a passive smoker or not on the basis of her husband's smoking habit," Garfinkel says. "We all know people, married to smokers, who can't stand the smoke and try to avoid it, and others, though married to nonsmokers, who are surrounded all day by friends who smoke."

In an interview with *Medical World News* in 1981, Garfinkel said that a valid study would require careful measurement of a nonsmoker's total daily smoke exposure. Many experts now agree on that necessity.

Since the lung-cancer issue surfaced, several studies in the U.S., Hong Kong, and Europe have also addressed the topic. All involve only small numbers of subjects

and suffer from the same lack of reliable exposure data. One Hong Kong study found that nonsmoking wives of smokers had a lower rate of lung cancer than their smoke-free counterparts, which suggests, if nothing else, that the time to retire the spouse index may be at hand.

Although no convincing study of the issue has yet emerged, the lung-cancer question flared up again last November, when an unpublished paper on the subject was discussed in *The New York Times*. In an analysis of earlier studies, James L. Repace, a policy analyst at the Environmental Protection Agency, and Dr. Alfred H. Lowrey, a research chemist at the Naval Research Laboratory, concluded that passive smoking might be responsible for some 5000 lung-cancer deaths annually in the U.S.

An internal review of the paper by a member of the EPA's Carcinogen Assessment Group criticized some of its main assumptions. The estimate of 5000 lung-cancer deaths was judged questionable on various grounds.

The authors' conclusion is predicated on various assumptions about passive exposures rather than any actual mea-

and can induce coughing or headache.

Although a true allergy to tobacco smoke has not been demonstrated, the smoke can be particularly irritating to people with hay fever or other allergies. It may also aggravate the symptoms of people who experience chest pain (angina) from coronary disease and of those who suffer from asthma or other chronic respiratory diseases. Accordingly, even if passive exposure is not found to cause disease in healthy people, it can be a nuisance to many and a possible risk to some people with chronic illnesses.

Some surveys indicate that a majority of smokers as well as most nonsmokers favor current restrictions on smoking in public places, such as having nonsmoking areas in restaurants or aircraft or prohibiting smoking in hospital rooms. At the same time, a minority of smokers prefer no restrictions, and a minority of nonsmokers want a complete ban.

Surely, some restrictions are desirable, in the workplace as well as in public facilities—even if for comfort and aesthetics alone. But draconian measures may foster contention and wind up being observed largely in the breach.

surements in people. The authors also lean heavily on findings that are still in question, such as those of Hirayama and the researchers in Greece. Moreover, the results that conflict with their thesis, such as those of Garfinkel, are reinterpreted on the basis of their own estimates. When questioned about this point, Repace acknowledged to *CU* that "it's always a dangerous game to reinterpret other people's results."

In short, the role of passive smoking in lung cancer, if any, remains unresolved. Among medical scientists, the prevailing view appears to be that voiced recently by Dr. Ernst Wynder, an authority on smoking and cancer: "It's too early to make a definitive statement about it."

Meanwhile, some effects of passive smoking are less ambiguous, and a few are undisputed.

The annoyance factor

Health hazards aside, secondhand smoke causes discomfort to a significant number of people. These include some smokers as well as nonsmokers. Tobacco smoke most commonly affects the eyes, but it can also irritate the nasal passages



from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in such business.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; and, Sec. 1, Ch. 120, L. 1969; and, Sec. 25, Ch. 366, L. 1969; and, Sec. 12, Ch. 226, L. 1974; and, Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-102. Application for certificate, permit, and license. (1) Applications for licenses, permits, or certificates shall be made on a form prescribed by the state fire marshal.

(2) The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed and who pays the required fee.

(3) The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal and who pays the required fee.

(4) The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; and, Sec. 1, Ch. 120, L. 1969; and, Sec. 25, Ch. 366, L. 1969; and, Sec. 12, Ch. 226, L. 1974; and, Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(a).

50-39-103. Inspections and examinations authorized. The state fire marshal may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; and, Sec. 1, Ch. 120, L. 1969; and, Sec. 25, Ch. 366, L. 1969; and, Sec. 12, Ch. 226, L. 1974; and, Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-104. Revocations and suspensions authorized. The state fire marshal may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this part or any rules promulgated by the fire marshal under applicable law.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; and, Sec. 1, Ch. 120, L. 1969; and, Sec. 25, Ch. 366, L. 1969; and, Sec. 12, Ch. 226, L. 1974; and, Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-105. Fees. (1) The state fire marshal or his representative shall charge a fee, not to exceed a total of \$25, for the inspection and issuance of licenses, permits, and certificates.

(2) All fees collected under this section shall be paid into the general fund.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; and, Sec. 1, Ch. 120, L. 1969; and, Sec. 25, Ch. 366, L. 1969; and, Sec. 12, Ch. 226, L. 1974; and, Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(c), (4)(d).

Part 2

Standardization

50-39-201. Fire protection equipment to be equipped with standard thread. Hereafter, all equipment for fire protection purposes purchased by state and municipal authorities or any other authorities having

charge of public property shall be equipped with the standard thread for fire hose couplings and hydrant fittings designated as the national standard as adopted by the national board of fire underwriters, which standard is hereby designated as the standard for such equipment in the state.

History: En. Sec. 1, Ch. 53, L. 1929; re-en. Sec. 2762.1, R.C.M. 1935; R.C.M. 1947, 82-1233.

50-39-202. Fire marshal to direct standardization. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal of Montana. The state fire marshal is authorized to proceed to make such changes as may be necessary to standardize all existing fire protection equipment in this state immediately after March 1, 1929. He shall provide such appliances as are necessary for carrying on this work and shall proceed with such standardization as rapidly as possible and complete such work at the earliest date circumstances will permit.

History: En. Sec. 2, Ch. 53, L. 1929; re-en. Sec. 2762.2, R.C.M. 1935; R.C.M. 1947, 82-1234.

50-39-203. Notice of necessary changes — converting equipment. The state fire marshal shall notify industrial establishments and property owners having equipment for fire protection purposes which it may be necessary for a fire department to use in protecting the property or putting out fire of the changes necessary to bring their equipment up to the requirements of the standard hereby established and shall render them such assistance as may be available in converting their equipment to standard requirements.

History: En. Sec. 3, Ch. 53, L. 1929; re-en. 2762.3, R.C.M. 1935; R.C.M. 1947, 82-1235.

CHAPTER 40

SMOKING IN PUBLIC PLACES

Part 1 — Montana Clean Indoor Air Act

Section	Short title.
50-40-101.	Purpose.
50-40-102.	Definitions.
50-40-103.	Designation or reservation of smoking or nonsmoking areas — notice.
50-40-104.	No smoking signs in certain places.
50-40-105.	Requirements of health care facilities.
50-40-106.	Exemptions.
50-40-107.	Enforcement.
50-40-108.	Penalties.
50-40-109.	

Part 1

Montana Clean Indoor Air Act

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: En. Sec. 1, Ch. 368, L. 1979.

50-40-102. Purpose. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

History: En. Sec. 2, Ch. 368, L. 1979.

50-40-103. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.
- (2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.
- (3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- (5) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.
- (6) "Smoking area" means a designated area in which smoking is permitted.
- (7) "Place of work" means an enclosed room where more than one employee works.

History: En. Sec. 3, Ch. 368, L. 1979; and, Sec. 1, Ch. 460, L. 1981.

Compiler's Comments
1981 Amendment: Added "open to the public" and (6); and substituted "Place of work" for "Working area" in (7).

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) Except for those enclosed public places provided for in 50-40-105, the proprietor or manager of an enclosed public place shall:

- (a) designate nonsmoking areas with easily readable signs; or
- (b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or
- (c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.

History: En. Sec. 4, Ch. 368, L. 1979; and, Sec. 2, Ch. 460, L. 1981.

Compiler's Comments
1981 Amendment: Added "containing a restaurant and a tavern" and "that is clearly visible to the public stating this designation" at the end of (1)(c); and added

50-40-105. No smoking signs in certain places. No smoking signs shall be conspicuously posted in elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

History: En. Sec. 5, Ch. 368, L. 1979.

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

- (a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;
 - (b) prohibit smoking in all kitchens, laboratories, and corridors;
 - (c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;
 - (d) provide a nonsmoking area in all waiting rooms;
 - (e) prohibit employees from smoking in patient rooms; and
 - (f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.
- (2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.
- (3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: En. Sec. 6, Ch. 368, L. 1979.

50-40-107. Exemptions. The following shall be exempt from this part:

- (1) restrooms;
- (2) taverns or bars where meals are not served;
- (3) vehicles or rooms seating six or fewer members of the public.

History: En. Sec. 7, Ch. 368, L. 1979.

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.

History: En. Sec. 8, Ch. 368, L. 1979.

50-40-109. Penalties. A person who fails to designate or reserve a smoking or nonsmoking area in his establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than \$25.

History: En. Sec. 3, Ch. 460, L. 1981.

CHAPTER 41

LAE TRILE

Part 1 — General Provisions

Section

50-41-101. Laetrile defined.

50-41-102. Laetrile authorized.

50-41-103. Hospital may not interfere.

50-41-104. Health care facility liability.

50-41-105. Person not subject to disciplinary action.

TESTIMONY HB 183

My name is Eileen Robbins. I am speaking on behalf of myself. I support HB 183 and urge you to give it a "do pass" recommendation.

I believe it is important to all of us to designate non-smoking areas in enclosed public places.

I have bronchial asthma. Bronchial asthma is a common form of asthma due to hypersensitivity to an allergen. I am allergic to several environmental factors including: grass, cats, wood smoke, cigarette smoke, and several others. Instead of breaking out in hives or sneezing, I have difficulty breathing during exposure. My symptoms start with a tightness of the chest, followed by shortness of breath and wheezing. At this point I must medicate myself or my breathing will become even more labored and inadequate to oxygenate the cells of my body.

As a precaution, I carry a medication inhaler with me at all times; I am dependent upon it to assist bronchial dilation to allow for adequate air exchange.

I feel it is unfair for me to have to breathe air that is contaminated by cigarette smoke and particulate matter when I am in an enclosed public place. My options are to medicate myself or immediately get out of the contaminated place. In most instances I medicate myself, but for every whiff from my inhaler I am subjecting my lungs to a strong drug just to counteract the air I'm breathing!

I have learned to put up with the several side effects from the anti-asthma drugs I take; however, I feel it would be advantageous to all of us if owners of establishments geared to public use would designate non-smoking areas.

Owners of establishments have been unwilling to designate non-smoking areas^{in the past} even when specifically asked by myself and others. HB 183 would require what should be common courtesy.

Respectfully submitted,

Eileen C. Robbins

Although on the surface this appears to be a very good argument, it is inconsistent with the philosophy of our health and safety statutes, as well as every piece of legislation regulating business. Legislation exists that regulates the temperature of food in a restaurant, the citizens who can be served liquor, and even that public areas have a restroom. In some communities there are laws to even regulate the color of signs that they hang on the exterior of their building. Clearly, when there is a need to maintain a constitutional right or maintain a safe, sanitary environment, the Supreme Court has deferred to the decision of the Legislature concerning the right to regulate private enterprise, specifically regarding non-smoking regulations. With an issue as important as smoking, it is ludicrous to say that this issue is not important enough to qualify for ensuring that all citizens are assured of their right to free choice and clean air.

Other areas, such as Oregon and San Francisco, have adopted similar statutes to H.B. 183. Let us uphold Montana's honorable reputation as a state that is open-minded and willing to change. Let us not be the last to acknowledge that non-smokers deserve the same rights as smokers! I urge you to extend the logic of the Shrimp v New Jersey Bell Telephone case to include all public areas. I hope that you give H.B. 183 a DO PASS motion.

Thank you for the consideration.

Ann Krebill
Missoula
2-4-85

"The evidence is clear and overwhelming. Cigarette smoke contaminates and pollutes the air, creating a health hazard not merely to the smoker but to all those around her who must rely on the same air supply. The right of an individual to risk his or her own health does not include the right to jeopardize the health of those who must remain around him or her in order to properly perform the duty of their job."

Shrimp v New Jersey Bell Telephone
[45 NJ Super 5]6,368 A2d 408
(NJ Sup Ct, 77)

In 1983 Representative Ellerd introduced a bill similar to House Bill 183. After reviewing the testimonies presented, I feel that there were several issues unaddressed. With the hope of clarifying many of the ambiguities, I speak on behalf of myself and all other concerned citizens.

To begin, it is necessary to realize that the key issue is not solely the health issue, but it also includes the right of an individual to choose. Although the opponents of the bill will attempt to establish that this bill is constitutionally suspect, I urge you to consider that the recognition that smokers and non-smokers have the right to freedom of choice has grown since the Surgeon General's proclamation of the dangers of smoking. In fact, the courts have even alluded that there is a great enough danger to smoke to consider the health and the freedom of choice issues as being valid reasons for legislation.

Whether the government has the right to restrict a private owner by mandating a non-smoking area is of major concern for all those present. One must ask if the government has the right to restrict a private owner by mandating a non-smoking area.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES



TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

Testimony Before the House Committee on Human Services and Aging

February 4, 1985

House Bill 183

Madam Chairman and members of this committee: For the record, I am Bob Moon, Health Education Consultant with the Division of Health and Medical Facilities of the State Department of Health and Environmental Sciences in order to enter into the record that the Department is supporting HB 183.

From a public health viewpoint, this represents an appropriate amendment to 50-40-104, the Montana Clean Indoor Air Act. Concerns over the health effects from passive cigarette smoke are hardly a myth, as some tobacco advertisements suggest. In reality, passive cigarette smoke is likely the most dangerous pollutant we face today.

Thank you.

1. Campbell, B., O'Neill, B., and Tingly, B. "Comparative Injuries to Belted and Unbelted Drivers of Sub-compact, Compact, Intermediate, and Standard Cars." Presented at the Third International Congress of Automobile Safety, San Francisco, 1974.
2. Robertson, L. "Estimates of Motor Vehicle Seat Belt Effectiveness and Use: Implications for Occupant Crash Protection." AJPH. 1976, 66:859-864.
3. Moon, Robert W. Montana Behavioral Health Risk Survey - Statewide Analysis of Selected Health Risk Factors. Montana Department of Health and Environmental Sciences, 1984.
4. Williams, A. and Robertson, L. "Observed Daytime Seatbelt Use in Vancouver Before and After the British Columbia Belt-Use Law." Canadian J. Public Health. 1979, 70:329-332.
5. Robertson, L. "The Seat Belt Use Law in Ontario: Effects on Actual Use." Canadian J. Public Health. 1978, 69:154-157.

WITNESS STATEMENT

Name Mary Gettel Committee On Human Service
Address 802 30th ST. N. Date Feb. 4, 1985
Representing self Support ✓
Bill No. HB - 183 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Left employment during a pregnancy because of smoke-filled work environment.*
2. *I support this bill for myself & my child.*
3. *I believe we all are born with the right to breathe clean air.*
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Hi, I'm Mary Gettel, a teacher, and I came here today from Great Falls. This issue is very important to me so I have taken off from work to come here as I did two years ago.

The last time I was here I was expecting my first child and I told of a situation I had recently been in. I was unable to secure a teaching job in Great Falls so I found another job. I had to leave this position because of my concern for my health and that of my unborn child. I worked in a small room with a woman who smoked. The firm was not willing to allow me to work in another area of the building. I was unable to find another job at the time and was not eligible to receive any unemployment benefits because I had voluntarily left that position.

This is when I became involved with the issue of non-smokers' rights. I believe that my little girl and I were born with the right to breathe clean

air no matter where we happen to be.
I hope that you will join me in
support of this bill so that all
of us and our children can be guaranteed
that right in public places.

Thank you.

WITNESS STATEMENT

NAME DAVID B. LACKMAN BILL NO. HB 183
ADDRESS 1400 Winne Avenue, Helena, MT 59601 DATE Feb. 4, 1985
WHOM DO YOU REPRESENT? Montana Public Health Association
SUPPORT X Yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HB 183 Ellerd Designated Nonsmoking Area Required for All Enclosed Public Places
Comments:

I am David Lackman, lobbyist for the Montana Public Health Association, testifying in support of HB 183.

1. Resolution No. 1 of our Association; adopted from the American Public Health Association, pledges us to support the goal of various agencies in working toward a non-smoking society in the United States by the year 2,000.
2. Evidence that smoking is one of the prime insults to human health continues to mount up.
3. Not only is it a hazard to the smoker; but to others exposed to smoke. Tobacco smoke causes chromosome breakage- especially in the human fetus.
4. In the mid-thirties, data on the accumulation of lethal genes in man was fed into Univac. Out came the prediction that the species, Homo sapiens, would be extinct in 3,000,000 years. Then we didn't have data on the effect of tobacco smoke on the species. Now it appears probable that it could hasten our demise. There is no data indicating that the species is adapting to this threat.
5. Anything you can do to lessen exposure to this threat is a noble effort. We urge your support of HB 183.

House Human Services Rm 312-2 Monday 2/4 3:00 P.M.

Dangers Cited In Warnings For Smokers

After months of negotiations between health groups and the tobacco industry, which agreed to support it, federal legislation appears imminent to replace the current general warning on cigarette packages with four rotating warnings citing specific dangers associated with smoking.

The present warning label hasn't been revised in more than 13 years, and proponents of the change claim many Americans, particularly young people, are unaware of the specific health risks caused by smoking.

The current warning on cigarette packages and in advertising reads:

"The surgeon general has determined that cigarette smoking is dangerous to your health."

The new warnings, which are to rotate every three months, read:

- **Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.**
- **Smoking by pregnant women may result in fetal injury, premature birth, and low birth weight.**
- **Cigarette smoke contains carbon monoxide.**
- **Quitting smoking now greatly reduces serious risks to your health.**

The warnings are to be enlarged by 50 percent from their current size for greater visibility.

MONTANA PUBLIC HEALTH ASSOCIATION

Resolution No. 1

WHEREAS, cigarette smoking accounts for some 340,000 deaths each year and debilitates another 10 million people, and studies have shown the price of cigarettes might have a significant effect on cigarette sales to teenagers and young adults, and the federal government recently decreased the excise tax on cigarettes by 8 cents per package, beginning in 1985;

BE IT RESOLVED, the Montana Public Health Association executive board supports the goal of various agencies in working toward a nonsmoking society in the United States by the year 2000, and that the MPHA president write to our congressional delegation to express our disapproval of the current reduction in federal cigarette tax;

BE IT FURTHER RESOLVED, MPHA will support legislation in the 1985 Montana Legislature to increase the state cigarette tax from 16 cents to 24 cents per package, which would generate 4 to 8 million dollars in new state revenue in fiscal year 1986, and that part of that revenue be earmarked for health-related smoking prevention and education programs;

AND, BE IT FURTHER RESOLVED, the MPHA lobbyist (Dr. David B. Lackman, 1400 Winnie, Helena, MT 59601) inquire about developing such a bill and report to the executive board.

In addition, cigarette manufacturers will have to disclose the ingredients added to tobacco in the manufacturing of cigarettes. Health officials say this information will assist researchers in making more precise assessments of the toxicity of the new generation of low-tar, low-nicotine cigarettes.

The legislation also requires the U.S. Secretary of Health and Human Services to establish an interagency committee on smoking and health and gives new impetus for expanding federal smoking research and public education activities.

Proponents explained a major focus

for the new federal activities will be to encourage and assist current smokers to quit and to discourage young people from starting.

The U.S. surgeon general says smoking is the single greatest preventable cause of death in the United States. "There are 130,000 smoking-related deaths linked to cancer each year, an additional 170,000 deaths from heart disease are smoking-related, and another 50,000 die each year from emphysema and other chronic obstructive lung diseases brought on by smoking."

Public Information Unit
Department of Health and
Environmental Sciences
Helena, Montana 59620

*Treasure State Health
Fall, 1984*

WITNESS STATEMENT

Name Ann Danzer Committee On HHS
Address 1011 Logan Date 2/4/85
Representing self Support yes
Bill No. HB 183 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. My name is Ann Danzer, I am speaking on behalf of myself. I support HB183 and
2. urge you to give it a do pass recommendation.
3. I have asthma and must use medication daily to breathe. Even with medication I can not tolerate smoke. When you suffer from lung problems it is very difficult to go out
4. in public, this includes enjoying a meal in a restaurant or just standing in line at the grocery store.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Thomas W. Maddox Committee On Human Services
Address 1777 LeGrande Cannon Blvd. (no mail delivery)
P. O. BOX 123 Date 4 February 1985
Helena MT 59624
Representing Montana Association of Tobacco Support _____
and Candy Distributors
Bill No. House Bill 183 Oppose X
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. HB183 is not needed. Overall, Montanans have responded to the issue, on the business level and among individuals, with consideration for one another. Since original laws have been effective, in 1979, a positive educational process is under way. It is working without additional enforcement and the expense of time and money more policing requires.
2. HB183 is anti-business. Prohibition of smoking on a mandatory basis would diminish sales of the legal products targeted by HB183. Mandatory nonsmoking premises would force many who enjoy cigarette smoking to take individual and family business and patronage elsewhere. The present law allows some freedom in business conduct; it allows the competitive market place to prevail in conformity with tradition.
3. HB183 creates or fosters excessive police statism. Prosecution and convictions with \$100 fines imposes a burden on our county attorneys which could be intolerable. Our county attorneys are already burdened, both in time and budget limits, as they cope with high crimes—homicides, arson, rape cases. HB183 escalates a social courtesy issue to a degree of crime our prosecutors do not want imposed on their offices. Before you vote, seek counsel from your own county attorney, your own enforcement officers.
4. HB183 if enacted contradicts state policy of recognizing tobacco as a legal product and continually increasing dependence on tobacco smokers for government revenue, for the state's growing payrolls, and growing service costs. How great the dependence is is dramatized daily in this session, with state revenues short and some contending more cigarette tax is needed to balance the budget. If all pending state-federal legislation pending is enacted, Montanans face a tax of up to \$6.00 on a carton of cigarettes. If HB183 is enacted and cigarette smoking is diminished just one-tenth of one per cent the loss of Montana cigarette revenue would approximate \$22,000 in our ensuing two year budget. If just one more public employee be hired for enforcement, it would be that much further cost to taxpayers.
5. HB183 is adverse to Montana's major industry tourism. Visitors comment on their impressions of freedom in Montana, versus their home states.
6. HB183 is impaired with many technical problems, requiring work by legal counsel.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Fuller presentation is attached.

Following prepared for delivery at 3 p.m., Monday, February 4, 1985, session, room 312

I'm Tom Maddox, representing the Montana Association of Tobacco and Candy Distributors

By a unanimous vote of the association members, the association is opposed to HB183, and respectfully requests that this committee kill HB183 as proposed legislation which is not necessary, anti-business and against the revenue interests of the state.

1. Our responsibility is to contribute some balance to considerations of HB183.

The Montana local wholesale cigarette distributor is performing a service to the state by being the primary source of revenue for a great amount — millions of dollars — of the state government's expense of operations. Few persons are either unaware, they have forgotten or they are taking for granted the heavy burden which the state has placed upon a relatively few Montana wholesale cigarette distributors. The law puts a squeeze on the Montana cigarette wholesalers. In the first place, they order their cigarettes from manufacturers who require cash payment within seven days, or cigarette deliveries are terminated. Then the state law requires that these wholesales pay for all taxes on cigarettes or arrange costly shortterm credit for tax indicia — tax stamps. At present the total of state-federal taxes on a carton of cigarettes is \$3.20. That's about 33 per cent of the pack or carton; for those who can afford only the cheaper generics, this percentage of tax burden is greater, for the tax remains the same. How great the dependence of our state government is being dramatized by our governor daily, for he claims the budget can't be balanced without exacting even greater tribute from the citizens who enjoy smoking their cigarettes.

Please bear with this detail. It is to make the point that House Bill 183 is aimed at reducing the viability — the dependability — of cigarette tax as a predictable revenue. We hear and read the news media: Now the economy and antibusiness actions by government has reduced the state of Montana revenue from the state's liquor business. Government had complacently over estimated this.

2: HB183 Opposition statement

If pending or proposed state-federal tax increases are all enacted, the tax burden on declining numbers of those whose choice and pleasure is smoking cigarettes will be up to \$6.00 in Montana, for the maximum carton cost.

To repeat: Now being requested by government is a tax of as much as \$ 6.00 a carton of cigarettes this year.

The numbers of these overly burdened taxpayers are declining. However, government's cigarette dependency for revenues grows and grows each year.

We conclude that HB183 is adverse to our state government's interests, which is to say HB183 is not in the interests of a majority of citizens, nor the thousands of state government employees.

2. Our second point: House Bill 183 is just one more of the bills which gives Montana its national image of being anti-business. If enacted, the drop in product sales would in all probability drop at a faster rate. This means loss of sales of this legal, government revenue product, and loss of income for private families all over the state who are dependent upon this business. A drop in their wages and salaries means less revenue for the state from income taxes. We have at hand a great amount of statistics to support the foregoing observations.

3. To support the statement that House Bill 183 is not necessary, you must be impressed by the educational process which is under way.

I am impressed everywhere I go that there are fewer men and women smoking cigarettes or even fewer cigar smokers than a few years ago.

Recall that first bill of this nature — House Bill 157 in 1973. (Refer to , display bill

In earlier years, anti-smoking elements at times approached hysteria. But even in Montana's first such bill there was one element of common sense: It exempted (The 1979 act public places which accommodated 30 or fewer persons. [REDACTED] exempted public places seating 6 or fewer persons) w [REDACTED] The point is: THERE'S AN EDUCATION PROCESS GOING ON. We see it on roadside billboards, on T V where anti-smokers counsel us but government prohibits TV advertising; we see in newspapers offers for enrollment in schools or workshops to stop smoking. It's an educational process that we have observed in our legislature. I remember when visitors in the north seats of the gallery could barely distinguish through blue - brown smoke the features of the person in the speaker's chair. This session, one day we counted only nine ashtrays on representatives' desks. One was a pipe smoker. That's evidence of the educational process and evidence that House Bill 183 is not necessary legislation.

My wife and I when dining out often count the cigarette smokers. We observe that there are fewer and fewer in our restaurants. And this includes less smoking observable in the Hofbrau as well as Jorgenson's, in Tony's Lounge versus McDonalds, or wherever you wish to make a personal count.

When the first Montana "no smoking" bill was rejected in 1973, testimony was that the country was divided about 70 - 30 for smokers versus nonsmokers. Today we hear its closer to the other way around --- with 30 per cent. That's what the education process has done.

Even so, under our voluntary, independent philosophy in Montana, shopkeepers in our malls post them: NO FOOD, NO SMOKING. Our present law says it is all up to our operators of public places, and isn't that a better way than legislating more government intrusion in our private lives? Our restaurants have done a good job on the whole, posting "Non smoking" signs — in Skippers, the Pancake House, the 4Bs and many more. Even the tobacco industry nationally has an educational program to discourage cigarette smoking among teens.

In conclusion, the present Montana Clean Indoor Act is working.

It has had a primary role in the education process.

The balanced conclusion of the consideration before this committee is clear:

The legislature doesn't need HB183; it is not necessary.

Please vote against piling on more government.

Please vote against House Bill 183.

The foregoing was prepared by Thomas Maddox, registered lobbyist,
Executive Director
Montana Association of Tobacco and Candy
Distributors, Nonprofit Inc.
P. O. Box 123
Helena MT 59624 Telephone (406) 442 - 1582
Roster of association membership; support statistics available upon request.

SECTION 50 - 40 - 108 states, "The provisions of this part
shall be supervised and enforced by the local boards of
health under the direction of the department (State Health Dept.)"

What does this mean? To learn what this means, calls were made on the State Department of Health Consumer Safety section, the Health Departments' legal section people, and the county attorneys. This is what we learned:

NOTE:

THIS SHEET IS FOR CONSIDERATION OF THE COMMITTEE
IN EXECUTIVE SESSION, IN QUESTIONING WITNESSES,
PRIOR TO VOTING ON HOUSE BILL 183.

There are none among those interviewed who knows of a formal complaint, charge, arrest or fine under the Montana Clean Indoor Air Act of 1979. One conclusion which could be drawn is that there have been no problems, by numbers, or seriousness, to justify more law, more enforcement, more policing, or related expenses, as proposed in HB183.

With a proposed \$100.00 FINE and greater restrictive law, it might be concluded that there might be arrests which would not be made under the present \$25.00 fine. However, who would do what? First, a local health officer would have the responsibility of drafting a complaint formally, or a citation. This would be conveyed to the county attorney in most cases. Our county attorneys inform us that they are already over-burdened, and that their budgets are oft times inadequate.

If the latter contention be true, where the HB183 APPROPRIATION? Where's the fiscal note and is the respondent qualified to answer the foregoing circumstances of section 50 - 40 - 108? Does the state health department simply add this responsibility to its financial and personnel abilities? How is the local health department compensated for additional inspections, or citations and time taken for court testimony? How is the county attorney and his office covered on costs and personnel requirements? Custer County Attorney Keith Haker opposes HB183.

Do any serious proponents contend that they would be satisfied with merely putting such a law on the books, without today's level ^{of costs} of enforcements and at times protracted trial court and appeal court action? Custer County Keith Haker doesn't believe. Our health enforcers disclaim any experience in this area. Ask others. Ask your own county attorney. Ask your local health officer.

In view of our state's financial plight, could a bill calling for so little benefit, balanced with potential costs be justified at this time. If HB183 cost the state just one-tenth of one per cent of state tax revenue from curtailing that much smoking it would approximate \$12,000 in lost revenue. If HB183 resulted in the cost of only one more government employee, evaluate how much that would take away from revenue which could enhance education in your area or fund an important need.

*Montana Association of***Tobacco and Candy Distributors**

1777 Le Grande Cannon Blvd., P.O. Box 123, Helena MT 59624

Telephone (406) 442-1582

P. O. Box, or other address:

ALVERSON	Jackie	1887	Bozeman	59715	
ALVERSON	Bill		Bozeman	59715	
ANDERSON	Mark	608 E Main st	Sidney	59720	482-2910
ANDERSON	Sheri		Sidney	59720	
ARLINT	W. Allen	16 W. Reserve D	Kalispell	59901	752-4479
ARLINT	Betty	555 Three Mile	Dr Kalispell	59901	257-3397
ARLINT	John	16 W. Reserve Dr.	Kalispell	59901	752-4479
AULT	Burl	123 E Johnson	Wolf Point	59201	653-1313
AULT	Eunice		Wolf Point	59201	653-2806
AULT	Tom	212 Benton st.	Wolf Point	59201	653-1313
AULT	Wanda	745 Knapp st	Wolf Point	59201	653-2806
BALDRY	Pat	7248	Missoula	59807	543-5109
BALDRY	Kathy		Missoula	59807	
BARSTAD	Maxine	1887	Bozeman	59715	1-800-221-0508
BARSTAD	Paul		Bozeman	59715	
BERGSING	Sandra	1280	Livingston	59047	222-2200
BERGSING	Tom		Livingston	59047	
BOLLINGER	Donald J	1794	Billings	59103	248-2868
BOLLINGER	Mary Ann		Billings	59103	
BOLLINGER	Jack	1794	Billings	59103	248-2868
BOLLINGER	Kay		Billings	59103	(1-800-
BUCKNER	Edward D	1280	Livingston	59047	222-2200 (221 -
BUCKNER	Jean		Livingston	59047	222-6044 (0509
BUCKNER	Scott	1280	Livingston	59047	222-2200
BUCKNER	Steve	1280	Livingston	59047	222-2200
BURGESS	Alan D	608 Main st	Sidney	59270	482-2910
BURGESS	Rosemary		Sidney	59720	
CARPITA	Dan	129 N Montana St	Dillon	59725	683-5161
CARPITA	Suzan		Dillon	59725	683-5352
CHA TRIAND	Rick	7428	Missoula	59807	543-5109
CHA TRIAND	Sheerry		Missoula	59807	
CLONINGER	John R III	1720X	Havre	59501	265-5558
CLONINGER	Rose		Havre	59501	
DONNER	Alvin	1720X	Havre	59501	265-5558
DONNER	Sylvia		Havre	59501	
DURNAM	Dan	1887	Bozeman	59715	
ESHELMAN	Tom	7248	Missoula	59807	
FEIST	Stan	7248	Missoula	59807	543-5109
FEIST	Linda	1301 S. 3rd St W	Missoula	59801	543-4447
FORSETH	Tom	1887	Bozeman	59715	1-800-221-0509
FORSETH	Terri		Bozeman	59715	
FOSSEN	Denise	129 N Montana St	Dillon	59725	683-5161
FREDERICK	Bill	1155	Helena	59624	442-4333
FREDERICK	Bev		Helena	59601	
GASCON	Linda	2546	Great Falls	59403	453-7628
GIERKE	George A	Rte 1 Box 2299	MILES CITY	59301	222-1562

Montana Association of

Tobacco and Candy Distributors

1777 Le Grande Cannon Blvd., P.O. Box 123, Helena MT 59624

Telephone (406) 442-1582

January 1985

Tom Maddox,
Executive Director

The Montana Association of Tobacco and Candy Distributors is a not-for-profit corporation. It is comprised of 14 local warehouse businesses in 14 Montana cities. They comprise small businesses — independent service wholesalers of tobacco products — which the state of Montana needs so much to be successful for the progress and future of our ongoing economy.

A member-by-member survey in 1985 shows that there are 158 principals and employees — both men and women — among the association membership. As a reflection of the great personal involvement of our statewide business family, the accompanying three pages of names list 137 men and women who responded or participated in our latest annual meeting, September 21-23, in Bozeman.

These small business employees and employers are not to be confused with the major, international corporate manufacturers of cigarettes, nor the great corporate grocer chains, which are also part of the cigarette marketing system.

When you add on state sales taxes for cigarettes, legislators should realize that they are requiring these small businesses to advance tremendous capital to the state of Montana. Under Montana law, these local wholesale businesses are required to prepay federal and state taxes before the consumers purchase cigarettes. Since the laws were enacted in 1949, this fact of the prepayment of sales taxes is overlooked, or not known, by many legislators.

What other business does the legislature demand make such an out-of-pocket sacrifice for the good of the entire state?

What other product, with so low a product or unit cost, is burdened with so tremendous a tax?

If all pending state and federal legislation is approved in 1985, the burden of tax on cigarette smokers would be extracted from a minority of the taxpayers at the maximum collection of \$6.00 a carton of cigarettes, or 60 cents for a pack of 25 cigarettes; or \$5.60 for a carton of traditional 20 cigarette packs. No tax on so few is so great as this.

The greater the state tax on cigarette sales, the greater the sales of cigarettes in Montana by Indian reservation based retailers who do not pay state tax, with resultant loss of anticipated state cigarette revenues.

GIERKE	Robt. (Bud)	Rte 1 Box 2299	Miles City	59301	232-1563
GIERKE	Marge		Miles City	59301	
GOULET	Lloyd J	Box 1720X	Havre	59501	265-5558
GOULET	Dianne		Havre	59501	265-5117
GROH	Ed	1280	Livingston	59047	
GUTTENBERG	Paul	7248	Missoula	59807	
GUTTENBERG	Jeleen		Missoula	59807	
GUZA	John	2546	Great Falls	59403	453-7628
GUZA	Opal	2546	Great Falls	59401	452-4158
HAERR	Edward G	1280	Livingston	59047	
HAERR	Anne		Livingston	59047	
HARKINS	Bill	445 Centennial Ave.	Butte	59701	782-1268
HARKINS	Irene	809 West Silver	Butte	59701	723-3657
HARKINS Sr.	Jack	445 Centennial Ave.	Butte	59701	782-1269
HARKINS	Edna	809 West Silver	Butte	59701	723-3657
HARKINS	Jack W	809 West Silver	Butte	59701	723-3657
JENSEN	Steve	7248	Missoula	59807	
JENSEN	Barbara		Missoula	59807	
KNUDSON	Alan	212 Benton st	Wolf Point	59201	
KNUDSON	Joyce		Wolf Point	59201	
LAMMERDING	Jim	1720X	Havre	59501	
LAMMERDING	Carol		Havre	59501	
LARSON	Carlton	212 Benton st	Wolf Point	59201	
LARSON	Craig		Wolf Point	59201	
LARSON	Sheri		Wolf Point	59201	
LEWIS	Ellis	1887	Bozeman	59715	586-9183
LEWIS	Wanda		Livingston	59047	222-3223
LOVELL	Ken	1887	Bozeman	59715	586-9183
LOVELL	Christi		Bozeman	59715	
McBRIDE	Phil	1794	Billings	59103	
McBRIDE	Karen		Billings	59103	
McNAMARA	Jim	1280	Livingston	59047	
McNAMARA	Sandy		Livingston	59047	
MATTER	James D	1720X	Havre	59501	
MATTER	Jeane		Havre	59501	
MEALER	Gary	2546	Great Falls	59403	
MEALER	Debbie		Great Falls	59403	
MITCHELL	Kevin	Box 459	Shelby	59474	
MITCHELL	Elaine		Shelby	59474	
NEDRUD	Norman	212 Benton st	Wolf Point	59201	
NEDRUD	Pearl		Wolf Point	59201	
NORINE	Gary	1291	Bozeman	59715	

<i>Brownington</i>	<i>Ch. (Skip)</i>	<i>2546</i>	<i>Great Falls</i>	<i>59403</i>	<i>453-7628</i>
<i>Parker</i>	<i>Becky</i>				
	<i>Mike</i>	<i>2546</i>	<i>Great Falls</i>	<i>59403</i>	<i>453-7628</i>
	<i>Suzan</i>				

P. O. Box or other address:

PIATZ	Stan	1887	Bozeman	59715	586-9183
PIATZ	Kathy		Bozeman	59715	
PICKERING	Tim	459	Shelby	59474	434-5141
PICKERING	Annie		Shelby	59474	
PILCHER	Douglas	802 4th Ave. N.	Billings	59101	
PILCHER	Doran		Billings	59101	
POWELL	Bob	7248	Missoula	59807	543-5109
PROPP	Harold J	316 13th St. W.	Billings	59102	
PROPP	Betty		Billings	59102	
RASTELLINI	Jerry	2546	Great Falls	59403	453-7628
RASTELLINI	Cheryle		Great Falls	59401	
RUFF	Benny	459	Shelby	59474	434-5141
RUFF	Phyllis	815 Oil Field	Shelby	59474	434-2756
RUFF	Gary	459	Shelby	59474	
RUFF	Terri		Shelby	59474	
SAND	Bernie	215 N. 7th st.	Miles City	59301	232-1563
SCHEER	Mike	2546	Great Falls	59403	
SCHEER	Cheryl		Great Falls	59403	
SELWAY	Wanda	7248	Missoula	59807	
SELWAY	Jack		Missoula	59807	
SNELL	Raymond	1887	Bozeman	59715	
SNELL	Sheryl		Bozeman	59715	
SNOW	Arthur	1887	Bozeman	59715	
SPIETH	Gaylord	312 Peach	Bozeman	59715	
SPIETH	Mamie		Bozeman	59715	
THURSTON	Scott	1887	Bozeman	59715	
TIESZEN	Gary	804 4th Ave.	Billings	59102	
TIESZEN	Beverly		Billings	59102	
WAECKERLIN	James	1155	Helena	59624	
WARNER	William	1794	Billings	59103	
WARNER	Betty		Billings	59103	
WATSON	Tom	7248	Missoula	59807	543-5100
WATSON	Sydnee	624 W. Artem	Missoula	59801	
WOODRING	Dean	1155	Helena	59624	442-4333
WOODRING	Reyna	2210 National	Helena	59601	443-7284
WUEST	Ronald	1794	Billings	59103	
WUEST	Sharon		Billings	59103	

LIFETIME HONORED MEMBERS:

BISHOP	Frank H	2100 Cannon	Helena	59601	442-2263
BISHOP	Wanteeta		Helena	59601	
ANDERSON	Joseph R	41 Saddle Butte Dr	Havre	59501	265-4835
ANDERSON	Vivian		Havre	59501	
ROYCE	William D	140 North Av E	Missoula	59801	543-7698
ROYCE	Marje		Missoula	59801	
LEWIS	Frank D.	1612 S 3rd Av	Bozeman	59715	586-9122
LEWIS	Geri		Bozeman	59715	
AULT	Burl	212 Benton st.	Wolf Point	59201	653-1313
AULT	Eunice	123 Johnson st	Wol Point	59201	653-2806

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

TED SCHWINDEN, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604

TESTIMONY OF:
LEE J. TICKELL
DEPUTY ADMINISTRATOR
ECONOMIC ASSISTANCE DIVISION
DEPARTMENT OF SRS
111 SANDERS
HELENA, MT 59604
444-4540

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE MY NAME IS LEE TICKELL, DEPUTY ADMINISTRATOR OF THE ECONOMIC ASSISTANCE DIVISION OF SRS.

I APPEAR IN SUPPORT OF HB455 WHICH WOULD REQUIRE AS A CONDITION OF PAYMENT THAT MEDICAL PROVIDERS ACCEPT, AS PAYMENT IN FULL, THOSE PAYMENTS MADE UNDER THE STATE MEDICAL OR COUNTY MEDICAL PROGRAMS.

THE PROBLEM THIS LEGISLATION IS INTENDED TO ADDRESS IS A SITUATION WHERE A MEDICAL PROVIDER PROVIDES MEDICAL SERVICES TO AN INDIGENT RECIPIENT WHO IS ELIGIBLE UNDER EITHER THE STATE MEDICAL PROGRAM ADMINISTERED IN THE STATE ADMINISTERED COUNTIES OR A COUNTY MEDICAL PROGRAM ADMINISTERED IN THOSE NON-STATE ASSUMED COUNTIES. SOME OF THESE MEDICAL PROVIDERS HAVE BEEN BILLING THE CLIENTS FOR THE AMOUNT ABOVE WHAT IS PAID UNDER THOSE TWO PROGRAMS.

IN THE NON-STATE ADMINISTERED COUNTIES THE COUNTY COMMISSIONERS HAVE THE AUTHORITY TO ADOPT RULES WHICH ESTABLISHED THE PAYMENT LEVEL FOR THEIR RESPECTIVE COUNTY MEDICAL PROGRAMS. THE DEPARTMENT OF SRS' ROLE IS TO SIMPLY APPROVE THOSE PLANS. IN THE STATE ADMINISTERED COUNTIES, BY LEGISLATIVE INTENT, WE CANNOT EXCEED THE PAYMENT LEVEL AND SCOPE, AMOUNT, AND DURATION OF THE MEDICAID PROGRAM. IN THE MEDICAID PROGRAM IT IS PROHIBITED FOR A MEDICAL PROVIDER TO BILL THE RECIPIENT FOR ANY AMOUNT OVER AND ABOVE WHAT MEDICAID PAYS.

THIS LEGISLATION WOULD MAKE THE SAME CONDITIONS OF PAYMENT THAT WE CURRENTLY HAVE IN THE MEDICAID PROGRAM APPLY TO THE PAYMENTS MADE IN THE STATE MEDICAL OR COUNTY MEDICAL PROGRAM.

THIS LEGISLATION CLEARLY PROTECTS THE GENERAL ASSISTANCE RECIPIENT, WHO ARE TYPICALLY THE POOREST OF THE POOR, FROM BEING BILLED ANY AMOUNT OVER AND ABOVE WHAT THE STATE MEDICAL AND COUNTY MEDICAL PROGRAMS PAY.

IN GENERAL, THE STATE MEDICAL PROGRAM REQUIRES THAT A CLIENT UTILIZE AVAILABLE INCOME AND SPENDDOWN WHATEVER RESOURCES THEY HAVE AVAILABLE FOR THE PAYMENT OF MEDICAL BILLS PRIOR TO THE TIME THE STATE MEDICAL PROGRAM PICKS THEM UP. AT THAT POINT IN TIME THESE RECIPIENTS ARE WITHOUT RESOURCES AND WITH MINIMUM INCOME BECAUSE OF THEIR MEDICAL CONDITION TO BE PUT IN THE POSITION OF PAYING FOR ANY THING MORE THEN WHAT WE PAY ON THEIR BEHALF.

COUNTIES WOULD BE ALLOWED TO PAY MEDICAID RATES FOR THEIR RESPECTIVE COUNTY MEDICAL PROGRAMS. BY PAYING THE TYPICALLY LOWER MEDICAID PATES, IT WOULD PREVENT THAT COUNTY FROM BECOMING ELIGIBLE FOR A GRANT-IN-AID FROM STATE FUNDS AT AN EARLIER TIME BY PAYING FULL BILLED CHARGES.

IN GENERAL, THIS WILL HAVE NO IMPACT ON STATE, FEDERAL OR COUNTY FUNDS BUT IT WILL PROTECT RECIPIENTS.

FOR THIS REASON, WE SUPPORT PASSAGE OF HB455 AND IF YOU HAVE ANY QUESTIONS WITH REGARD TO THE LEGISLATION I WOULD BE MORE THAN HAPPY TO TRY AND ANSWER THEM.

THANK YOU.

LJT/056

WITNESS STATEMENT

Name JOHN Hyslip Committee On _____
Address 310 Sunnyview Lane, Kalispell, MT. Date 2-4-85
Representing Kalispell Regional Hospital Support _____
Bill No. HB 455 Oppose X
Amend _____

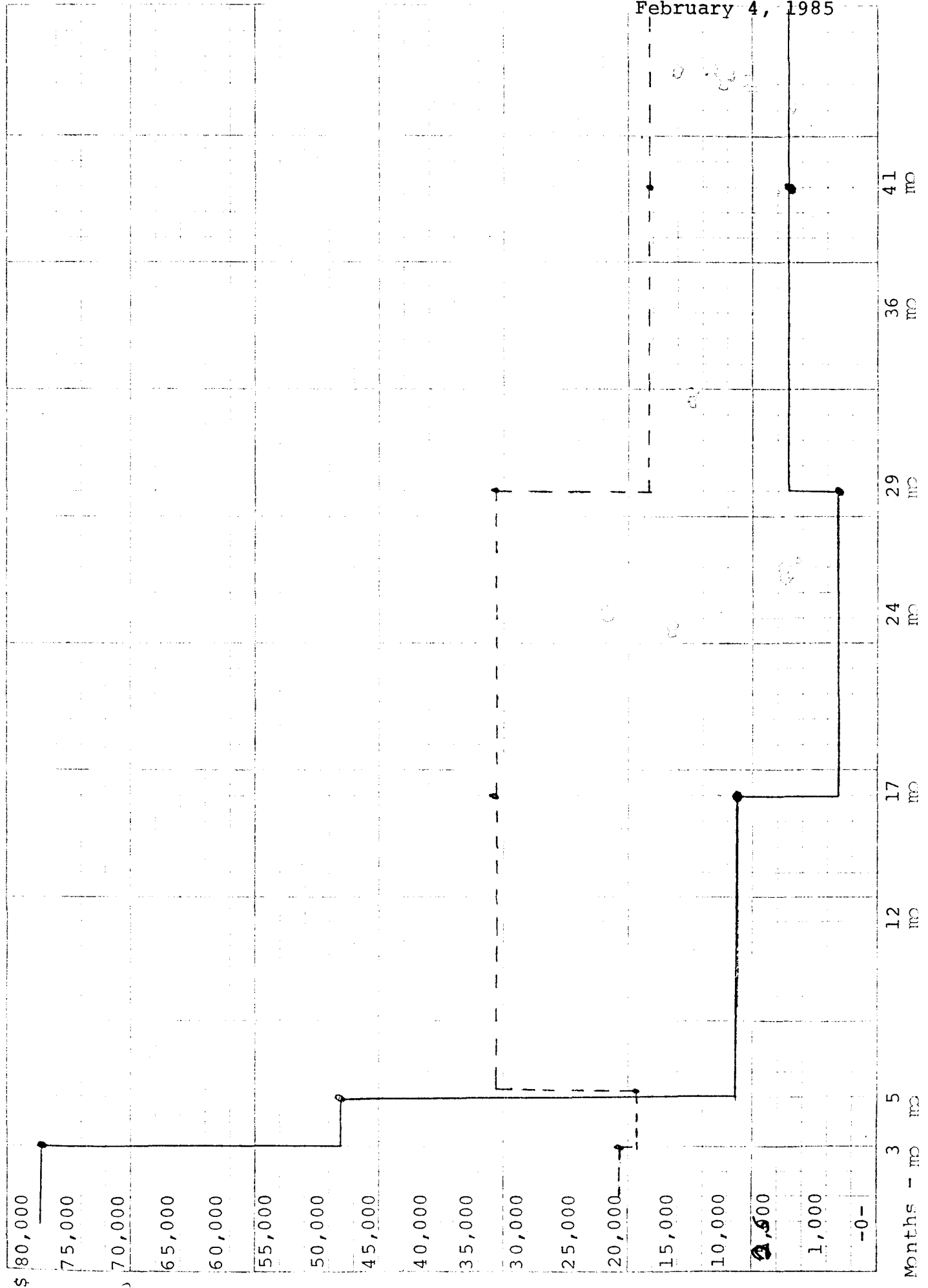
AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. No real savings is made. Costs are simply shifted to other payors.
2. This Bill represents "first dollar coverage" for some classes of recipients.
3. No incentive will be made to not utilize health services.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

MONTHLY COST COMPARISON OF SERVICES FOR 200 TEENAGE PREGNANCIES (100 receiving services ---
100 with no services ----)



COST ANALYSIS OF PREGNANCIES

Cost Ratio
FCH/No Ser.

Florence Crittenton Home & Services
(FCH)

No Services

		COST		COST	Cost Ratio FCH/No Ser.
1st Trimester Pregnancy	100 girls @ \$795/mo x 3 mo = (Maternity Home fee) (50% plan adoption)	\$238,500 (79,500/m)	100 girls @ \$212/mo x 3 mo = (AFDC grant) (3% plan adoption & 72% of the remaining go on welfare)	\$ 63,600 (21,200/m)	4/1
2nd Trimester Birth	50 girls @ \$961/mo x 2 mo = (Mother/Baby Program fee) (50% plan adoption while in M/B Program)	\$ 96,100 (48,050/m)	70 girls @ \$279/mo x 2 mo = (AFDC grant for 2)	\$ 39,060 (19,530/m)	2/1
3rd Trimester Leaving FCH	25 girls @ \$470/mo x 1 year = (80% of FCH mothers are off welfare by end of first yr)	\$141,000 (11,750/m)	70 girls @ \$470/mo x 1 year = (AFDC grant + food stamps & subsidized house)	\$394,800 (32,900/m)	1/3
TOTAL: 17 months with services		\$475,600	TOTAL: 17 months with no services	\$497,460	
1st Year	5 girls @ \$470/mo x 1 year = (FCH statistics show only 5% remain on welfare but with M/B Program new (1981) we estimate some clients returning on welfare = 10)	\$ 28,200 (2,350/m)	70 girls @ \$470/mo x 1 year =	\$394,800 (32,900/m)	1/14
2nd Year	10 girls @ \$470/mo x 1 year =	\$ 56,400 (4,700/m)	38 girls @ \$470/mo x 1 yr = (National statistics indicate 54% of teen mothers continue on welfare into their 20s)	\$214,320 (17,860/m)	1/4

SOURCE: Florence Crittenton Home statistics

SOURCE: 11 Million Teenagers and Teenage Pregnancy: The Problem Hasn't Gone Away

WITNESS STATEMENT

Name Joni Clearley Senior Nursing Student Committee On Human Services
Address 1517 Broadwater Cr. #4 Date Feb. 4, 1985
Representing Florence Crittenton Home Support X
Bill No. HJR 19 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Pregnant teenagers need the support available through organizations such as the Florence Crittenton Home.
2. The education of these girls through prenatal, parenting and counseling helps them understand what has happened, how it happened, what the future brings and the options available to her (parenting or ^{adoption} ~~other~~ ~~choices~~).
3. I feel that with these types of services available the chances of having healthier babies and mothers.
4. with better parenting and life skills increases greatly.

As a future health care professional I can see the need for more referrals; teenagers that are pregnant are a high risk group, and ^{with} ~~the~~ the availability of prenatal, counseling and parenting the risks are made known and there are persons available to help deal with this risks.

For those who are ~~adopt~~ planning adoption the support from these services help them to reaffirm their choices.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

EXHIBIT 18
February 4, 1985



February 4, 1985

TESTIMONY IN SUPPORT OF HJR 19

Madam Chair and Members of the House Human Services and Aging Committee:

My name is Anne Brodsky and I am here on behalf of the Women's Lobbyist Fund (WLF) to speak in strong support of HJR 19. The WLF wishes to commend Rep. Waldron for addressing a subject that is of vital concern to all of us. The WLF has a strong platform position endorsing the right of reproductive choices of women. This choice embodies the choice to carry a pregnancy to term, and, in the cases of teenage pregnancies in particular, this choice carries with it many unique and serious obstacles. These obstacles include economic ones and attitudinal ones, and we as a society have a strong responsibility to address these problems and to do something to alleviate them.

Unfortunately, the discussions surrounding the issue of teenage pregnancies usually center around the subject we all have deeply-rooted emotional feelings about: abortion. The discussions usually do not address the common ground that those who are pro- and anti- choice do have, that is, to make the choice to carry a pregnancy to term as safe and as free of social stigma as possible.

HJR 19 addresses the common ground we have and provides the important recognition that must be given to the difficulties faced by young, single, pregnant women and young, single mothers.

The WLF strongly urges you to pass HJR 19.

*Rep Kerner:
numerous Mr. citizens have asked the following
questions Thanks - Tom Pyar*

HB 455

What authority would SRS assume through this legislation. Would this give additional authority to SRS in this area?

If there is a fee system, who sets the fee schedules for counties that are not under state administration?

Who sets the schedule for state assumed counties?

How are county physicians chosen in counties that administer their own General Assistance?

In the case of hospital treatment, how would county hospitals be determined?

Does this provide for hospital absorption of the costs over the scheduled ceiling, or does it promote cost shift to private patients?

Has there been a history of poor provider participation in treatment of indigents in this state.

Do hospitals and physicians in this state currently provide treatment of indigents, without excessive billing and harassment for charges not paid by Welfare.

Is the fee schedule fair for provider reimbursement, does it provide for an adequate number of days of treatment for the patient.

Does the fee schedule promote provider participation or does it dissuade participation?

Are there currently any statutes in this state that provide protection for indigents through physicians and hospitals, such as insured treatment?

Is there potential for regressive treatment of the patient after the scheduled fee ceiling has been met?

Is this a cost containment program that will contain costs, or will it just cause a cost shift? Will the savings realized by the state only be reflected in an increase in the cost of private patient care?

** M S C A supports cost containment*

This Bill puts all counties on an equal basis - There are counties on the 13.5 mill levy provision may be in trouble & need to seek supplemental tax levies??

M.S.C.A. opposes co-payments - this bill does not address the problem.

VISITORS' REGISTER

HUMAN SERVICES AND AGING

COMMITTEE

BILL NO. HB 183

DATE 2/4/85

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
THOMAS W. MAIDDOX	P.O. Box 123, HELENA MT 59624		✓
VERN SULLIVAN	1245 W. WINE HELENA MT	✓	
F.H. BOLES	HELENA MT ^{Mont. Chamber of Commerce}		✗
DAVID LACKMAN	Helena MT ^{Montana Public Health Assn}	✓	
BOB MOON	HELENA MT ^{STATE HEALTH DEPT.}	✓	
Danny W Corti	Missoula, MT.	✓	
Earl W. Thomas	ALA of MIT	✓	
Hans B. Jones	825 Helena Ave.	✓	
Eileen Robbins	527 Hillside - Helena	✓	
Ann Druze	1011 Logan Helena	✓	
Clint Hess	Denver, CO	✓	
Mary L. Goff	Helena, MT	✓	
Joe			
Norm Anderson	Bullings, MT		✓
Chris Smith		✓	
Kristen Smith	Helena	✓	
John Larson	Helena		✓
Colleen Spindler	Bullings		✓
Geoff Unger	Helena	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Paul M. Pastorin

Mt. Falls - State Rep
Dist. 36app
✓

VISITORS' REGISTER

Human Services & Aging

COMMITTEE

page #2

BILL NO. 33DATE 2/4/83

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
DOUG OLSON	P.O. Box 1695, Helena 59624	✓	
ANN KREBILL	216 Crestline Missoula ⁵⁹⁸⁰³	✓	
Russell Johnson	127 Humbolt Loop	✓	
Joe Upshaw	Helena, MT (ANRP)	✓	
Monica Waterman	Helena, MT	✓	
Kyle Waterman	Helena, MT	✓	
Plan Heccegoy	Helena, MT	✓	
Erica Pinnerman	Helena MT	✓	
Tina ...	Helena, MT	✓	
Chris ...	Helena, MT	✓	
Karen Nathy	Helena	✓	
Donald ...	Helena	✓	
Shirley ...	Helena, MT 5-9601	✓	
John ...	Helena	✓	
John ...	Helena	✓	
John ...	Helena		✓
John ...	Helena		✓
John Vincent	Bazerman	—	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING

COMMITTEE

BILL NO. HJR 19

DATE 2/4/85

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
NORMA HARRIS	Helena	X	
Jaylene Nelson	Helena	X	
Doni Carley	Helena	X	
Marie Cartell	Helena	X	
Erica Proemsson	Helena	✓	
Tara Miller	Helena	X	
Kyle Waterman	Helena	X	
Ryan Wedelberger	Helena	X	
Chris Nicholson	Helena	X	
Jane Latice	Helena	X	
Carol Morris	Helena	X	
James J. Flanagan	Helena	X	
Ollie Niles	Helena	X	
Alfreda Williams	Helena	X	
Johnny Bess	Helena	X	
Bob Moon	Helena	X	
John Oster	Helena	X	
Anne Brodsky	Women's Lobby Bt End Helena	X	
Donald H. Hays	Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Shirley Thomas Helena Support.

VISITORS' REGISTER

COMMITTEE

BILL NO. 183

DATE 2/2/85

SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING

COMMITTEE

BILL NO. HB 455DATE 2/4/85

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JOHN Hyslip	Kalispell Regional Hospital Kalispell, MT.		X
Mary Geller	Great Falls, MT	X	
Bob Hood	Helena, MT	X	
David B. LACKMAN	Helena, MT ^{in T Public Health Assn}	X	
Danny W. Grier			
? Clint Hess	Denver, CO	X	
Emilio			
LEE J. TICKELL	S.R.S. - HELENA	X	
Jerome J. Woodcock	mt. medical ass'n	X ✓	
Chad Smiths Helena	Montana Hosp Ass'n		X
Randy Beck Havre	Northern Mt Hospital		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.